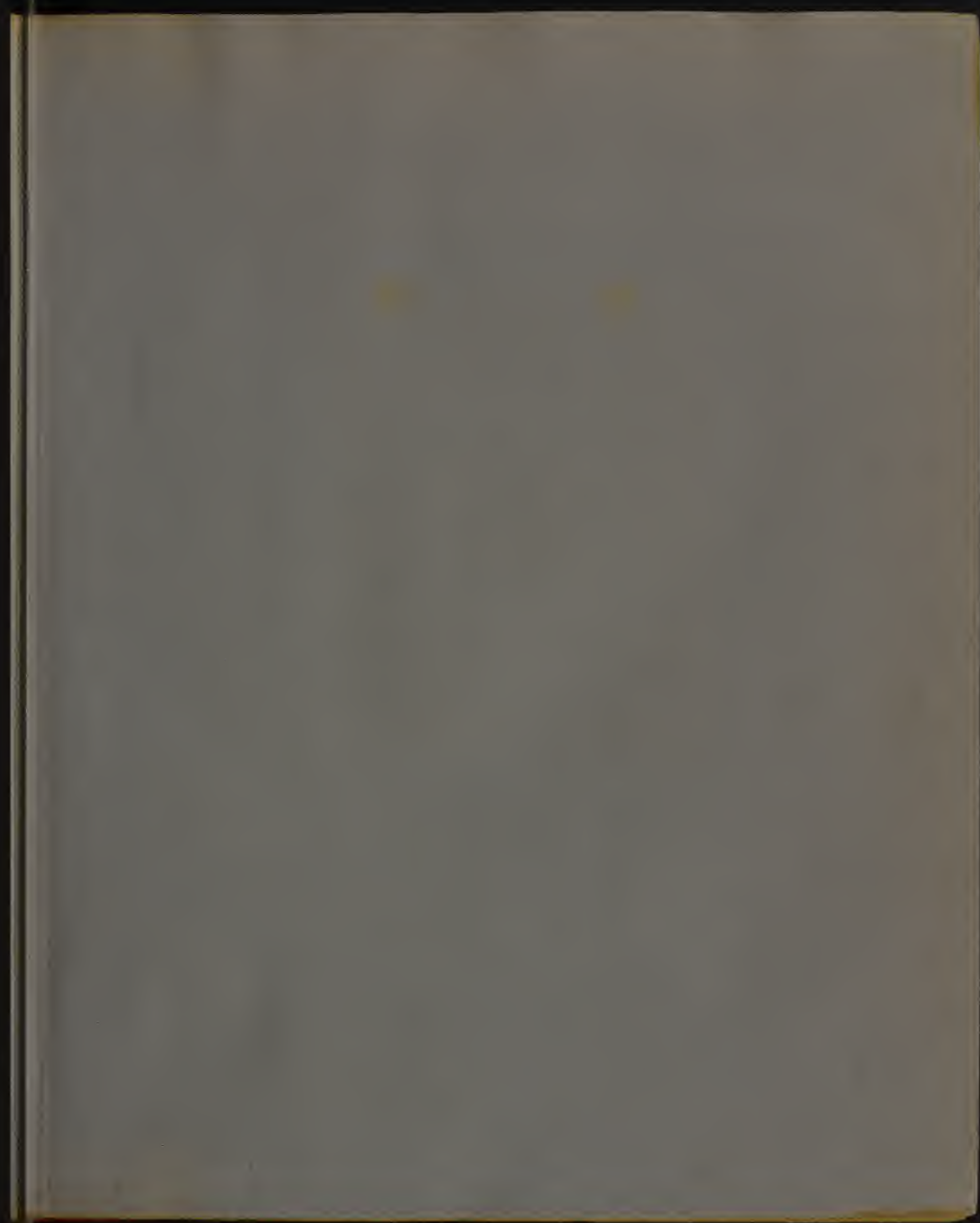
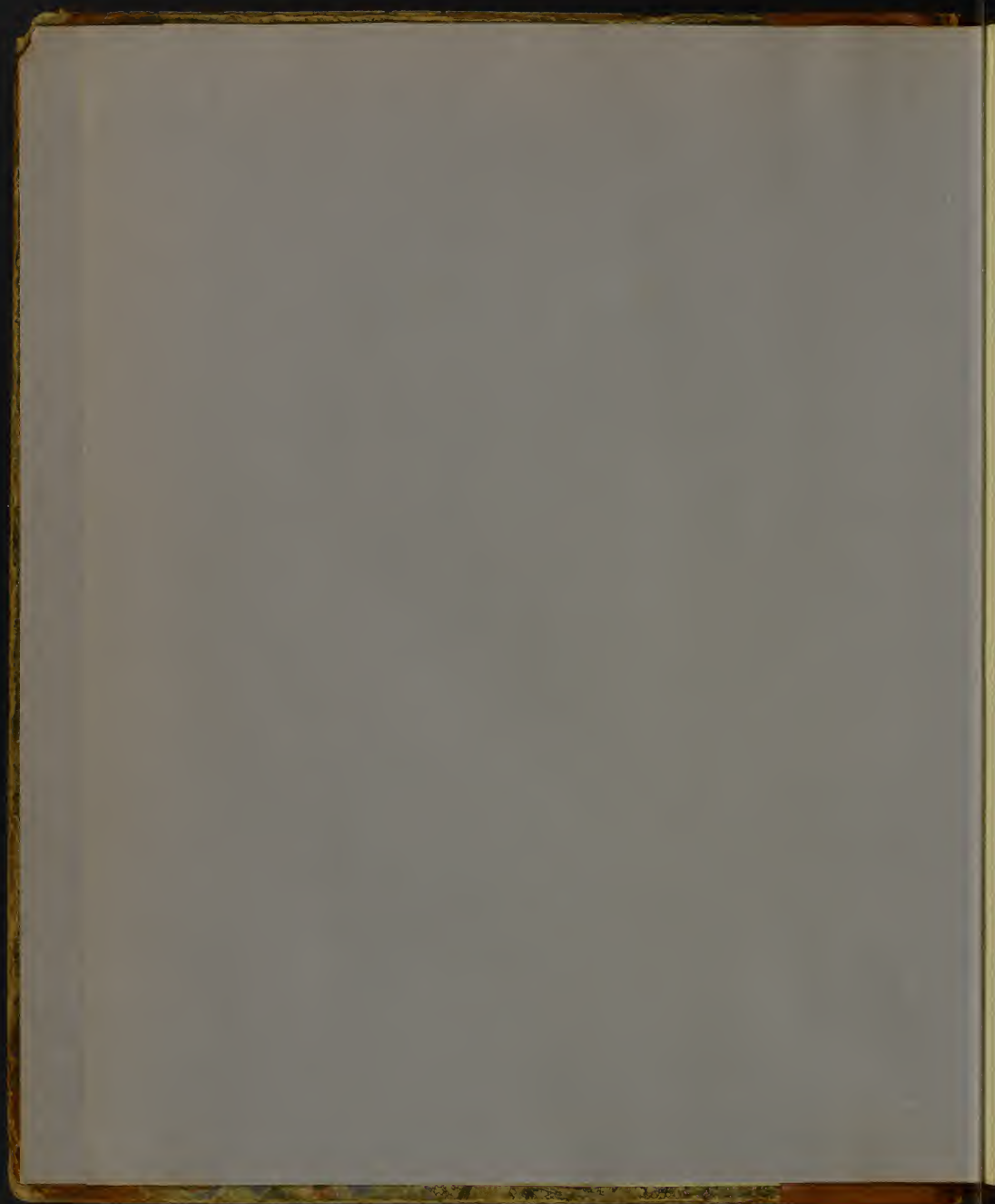


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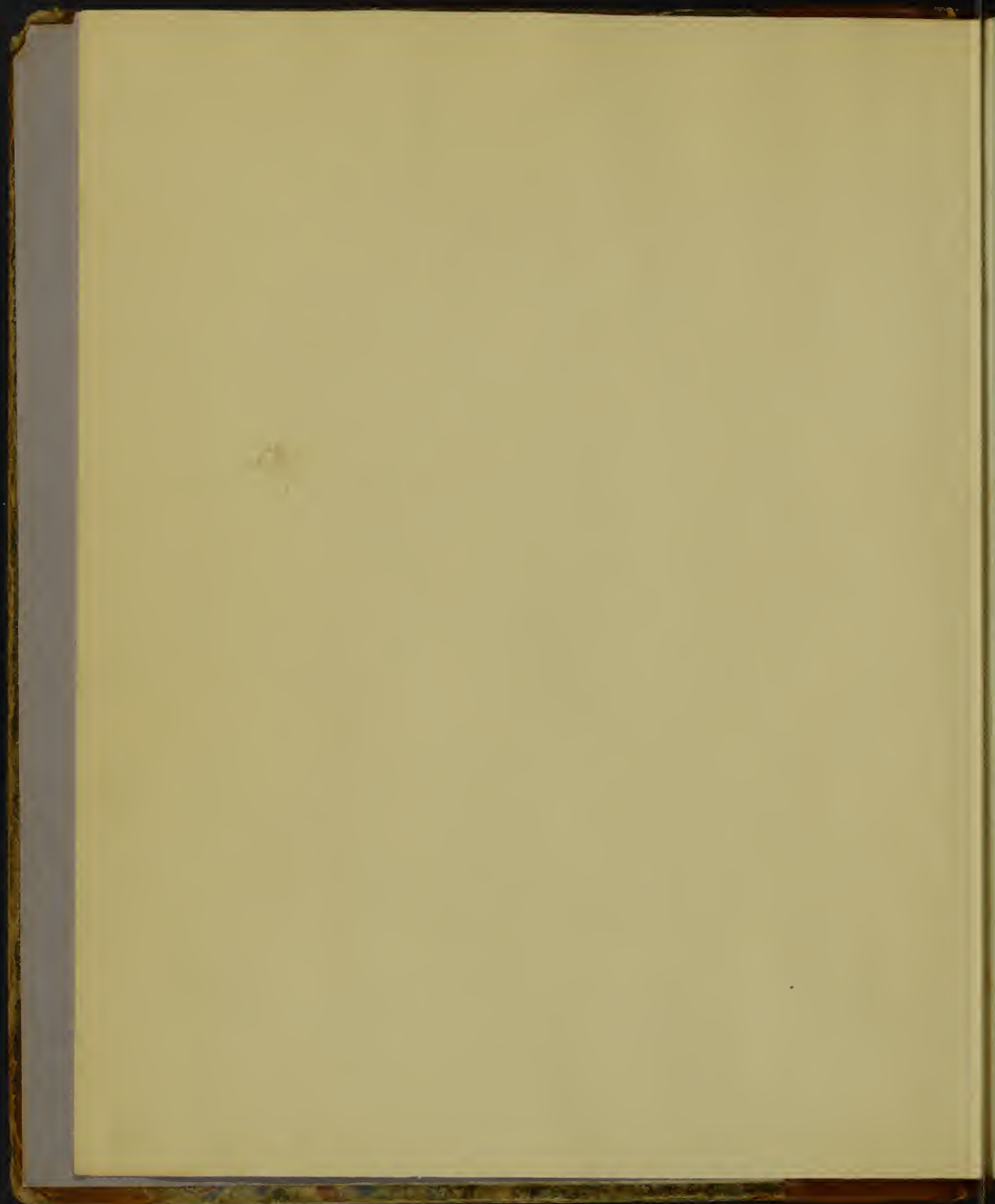
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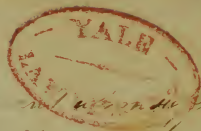


L

THE END OF THE WORLD

# Contracts

1



Section I. A contract is an agreement or promise in consideration, to do, or not to do a particular thing, or, it is a transaction in which each party comes under an obligation to the other, & each reciprocally requires a right to what is promised by the other.

Contracts are either express or implied. Express contracts are those in which each party stipulates in explicit terms. Implied are such as arise by the operation of Law out of the circumstances of the case.

In lecturing on this subject I shall consider—

I. How express contracts which are not binding to the extent of the durability of the parties contracting or their privileges not to be binding to their contracts.

It is necessary to the validity of every express contract that there be the assent of the will of the parties, & every person is bound in a contract to the extent of his assent.

Infants, Minors, Lunatics & married women are not ordinarily bound by their contracts. To these may be added those persons incapable by reason of incurable insanity created by Law.

Of the contracts made by the foregoing classes of persons some are void & some are only voidable. The voidable contracts may some of them be annulled at Law, & some of them are rescinded in Chancery only. So contracts of those who at the time of making them were deprived of their intellect by intoxication, are sometimes avoided in



## Contracts -

Contracts of Law & Conscience. as to those in Slavery -

Generally however the distinction may be taken  
The contracts of Slaves Negroes Indians & Married women  
may be avoided on either of the grounds. But the contracts  
of free persons & those indirectly will be reviewed by  
Chancery only -

Where Chancery review is necessary the Court goes  
on the ground of some just notice between the parties  
and in the first instance to the Court as a matter of fact  
As when an unwritten contract is made due in Chancery  
they review the propriety of the same actually too the  
interest in the same remains with the one who has been in  
possession in the transaction.

Contracts of Law in unwritten contracts have not  
more upon principles of policy. These written contracts  
without review to Court restore between the parties.

But Chancery in cases of penalties & here the subject  
comes regularly before them will Chancery does not  
denies payment, and the equitable sum due -  
In one case however they will not relieve against  
a penalty, & that is where they have laid one under  
a penalty to enforce their own decrees. But aside  
from that all contracts even so fairly made as are  
implicit or penally, will be chancery down in Equity



as a case a case to be paid, but it is not. That he will not flow from acres of meadow particularly included on plan of \$1000 if he does. But it is otherwise, a certain additional sum is in the nature of a severance damages. In this case he has bought his self to pay 20¢ per acre above the rent for one 1/2 acre of meadow which he should have. It is not in the nature of a severance but in the nature of a severance damages.

III. Contracts may be void or voidable by reason of mistake as to facts which goes the *vincula non* of the contract. As where one bought land supposing that a river was in it & afterwards on running the line it was found that it was not in it. The fact of its being in the land was the *vincula non* of the contract, the contract was void in a case in Pennsylvania it was there determined it was void. One bought a large tract of land for the purpose of purchasing a settlement which finally proved to be part of the same, the contract was vacated.

But if the fact mistaken is not the *vincula non* of the contract it does not vitiate it.

IV. Contracts are void or voidable by reason of mistake as to law. There is no mistake as to the law of the state. It is void in the effect of coercion.

Channing goes so far as to declare many contracts void at strict law where there was not legal duress, but where there was such the force of injury to the person or property.



# Contracts

When the subject has not an important condition,  
a contract in the true sense - In such cases one is not  
to perform contracts if possible if they be perfectly idle.

Contracts, issued by Jews are void many of them at  
Law - many of them in Chancery only -

<sup>2</sup> Hence the phrase in the execution of the contract is  
void at Law - where one is bound to do one thing, & another  
agrees to do it for \$50 when he must but \$80.

If the phrase is altogether in the execution it is not  
void at Law, but the word is, Chancery only to rescind, in the  
case of deception in a sale of goods.

When the grand word total is used, it means void at Law.  
Hence if you have made a contract.

When the contract is void, some recovery is possible by contract  
regulation of the title it is void. Under the Law will be  
considered the status of persons & persons & the Remedies  
which a man must pursue in Law & Equity - & as it  
respects contracts, express & implied will arise from an intention.  
I observed that consent is necessary to the existence of a contract.  
There is a class of void contracts impliedly by Law where consent  
is presumed, tho in fact there can be no consent, as where a  
man has not done what by Law he ought to do, here the Law  
raises a contract on the implied premise that he would pay  
damages in consequence of such neglect - or where one gets  
property by fraud the Law compels him to pay it back on an  
implied promise - & where a man has given his wife and



# Contracts

of doing I see the supports for the Law implies that the  
 Court and State will be - But out from former contract  
 for the will be heard the he observes that no one shall trust  
 a law in mortgage - sees a mortgage & conveys to another  
 without giving notice of the circumstance - the Law implies  
 that the mortgage has probably some influence by the release -  
 To where one is present & another is absent to sell this  
 house to a stranger without giving notice - the one who  
 is present is waived the claim to the house -

A man may take an entire advantage of  
 another's situation - Where one purchased a legacy  
 of a distressed person in prison at a bargain, the  
 condition was vacant or dead -

The houses & money was so extensive that  
 they could in some way attain the object they aim at -  
 - one create a little debt - They accordingly sold by  
 specialty & then of a mortgage want to be paid in  
 his little - then my wife gave it -



the children  
7  
Contracts

Lib. II. Of those Contracts which are made for want of a consent understanding of the parties

We then laid it down & suppose conversely that the Contracts of Idiots & Lunatics are void & then whether executory or executory. The Lunatics are here supposed to be grantors & heirs if they are grantees so Law may descend to them. I know it is generally that assent is necessary to receive a grant. But we say that the Law presumes assent in Lunatics & in those cases; but this is not true for the Law knows that it is impossible such persons should assent. No assent then necessary.

It is true that recovery in their right mind may dissent in these cases. The truth is it requires dissent to dissent but never assent to vest. This applies to all cases of executory grants.

But suppose that instead of being a deed of gift it is a conveyance for more than an equivalent. How does it vest? We say that the Lunatic can recover back the money & then I suppose the conveyance of the Land is void for want of reciprocity, since he extracted a consideration.

There is a position in Powell which I believe is erroneous, for it is supported by no other writer. He says that if a Lunatic grantee dies in a state of incapacity, his heirs may disagree to the grant. I allow that the heirs may refuse to receive the Lands, if they please, & this is true in every case of

## Contracts

descent, but I think they cannot avoid the contract of the Father. The question here is whether the contract is void or voidable.

That the contract of a Lunatic is void so Far 2316-3 mod. 296. 301.

It has been argued in the Court of H. B. that a surrender of a non compos being actually void, a contingent remainder depending upon the estate of such non compos was not destroyed by such surrender.

Again, where a Lunatic has given money for a bond which was filed in Chancery against the Prime owner of the Land, the Court directed the Defect to pay the same with damages. It is laid down in Powell & defended by him that a man cannot stultify himself: i.e. if he comes to his right mind he cannot avoid what he has <sup>then</sup> the contract made during his incapacity. No writer except Powell ever gave any reason for this, yet it is allowed that a man's children may stultify him: & strange as this may seem it is supported by authorities. So there may be added Powell a very able writer, tho very apt to make blunders. Powell's reason is that if a man might be allowed to stultify himself, he would appear strange for purposes of fraud. This deserves but little notice. To be sure Littlehale in his Natural Presumptions contends strongly that a non compos

on recovery may be as incapacity. And besides in the *Registrum Brevium* there is a writ for the alienor himself to recover Lands aliened by him during his incapacity. This is very strong. It is clear then that at that time it was not thought of. I know of no case that goes directly to overthrow this doctrine. Blackstone treats it as idle, tho he does not deny it to be Law. I question now whether the Courts in England adhere to it. It was lately decided unanimously in Court that a man after recovering may set aside his prior contracts during his recovery -

One leading consequence of not allowing a man to stupify himself was that before his death the persons might have become bankrupts & thus his heirs would have no remedy. But they got along with this by allowing others to stupify him. I will give you the whole Law on this subject -

Commissioners are to be appointed to enquire concerning the Lunatic - *de idiotis*, or *de lunaticis ingenuis* & who will find an office, as it is called. If they find him a Lunatic a *seque* *paris* is issued by the King who is bound as *patronus* to protect all his subjects, their goods & estates. This *sci. fa.* commands the persons concerned to come in & then cause why he ought not to pay back the money or why he holds the Lands. The action is on the part of the Crown because the King is the Guardian of Lunatics. This generally done by the Attorney General. Nov. 26.

## Contracts

School 126

Fall 170

30 Nov 102

2 Dec 118

2 Jan 414

Sometimes also Chancery will issue a supersedeas forbidding the lower Law Courts to proceed on the basis of a Sumatra as the proceedings are regularly in Chancery because better.

(But when a suit is in behalf of a Sumatra I am now to consider the performance of an agreement made with him before he became insane; it is not to set aside an agreement made by him the Sumatra ought to be a party & joined with the attorney general.

II. Of Contracts with Infants vide Parent & Child

III. Of Contracts of Temporaries vide Barrow & James

IV. Of the Contracts of Intoxicated Persons.

I observe that such contracts can be set aside only in Court of Chancery & never in Courts of Law - There is no case in this on the same question - reasons might be the same effect in both Courts.

(But) the latter i.e. the Court of Law were governed by very technical rules & thus gave rise to much of Chancery jurisdiction.

The Court of Law said that if an intoxicated man killed another he must be hanged, because policy required it. True otherwise there would be no security. It does not signify to say the man was in fault for getting drunk, for the same would apply to a man who has become a Sumatra by a long continued habit of drinking.

In these cases Chancery never interfered.



1811. The wife set aside contracts made by an intoxicated man  
 1812. when the intoxication was produced by the other contracting  
 party. We have had one decision of this kind in Court.

Why will not Courts adopt this rule? They will set aside  
 contracts in numerous instances with apparent advantage to both parties.  
 There is a principle of law known as duress & it seems reasonable  
 there will sometimes be resort to this point. At any rate  
 it is clear justice to take such advantage & of course is it  
 not allowable in Pharmacy on the ground? Indeed if it were  
 even an ad hoc right might be asserted against a both parties.

## V. Of the Contracts of Persons of Weak Understandings

There are subjects with the power of Changement  
 You may well inform you that there must be fraud in order to  
 obtain relief. But in truth it is always a fraud to deal with  
 such persons. For if the same bargain had been made with  
 a sensible person the Court would not interfere.

1811. 129 It is clear then that the weakness of understanding is  
 the new ground of their interference.

On this ground the weak witnesses of Paralytic cases are  
 frequently set aside from the presumption that there has not the  
 complete use of their reason: as if the contract were made with  
 a very inadequate consideration.

The new system of jurisprudence contains the three new decisions  
 in a very good & useful system of moral. But without these  
 decisions it would be a barren science indeed. In some of the  
 State there have no distinct & et of Pharmacy but the et of Law adopt a most  
 reasonable & proceeding of the English et Court.



## Contracts

Lect. 100.

There is a class of cases where both are ignorant of the mistake - yet the contract will stand.

Where two obtain the same thing under different titles of Law - they withdraw the suit & adjust the difference by a compromise. It turns out eventually that the property actually belonged to the one who made

10 Nov 26 - the sacrifice - he cannot recover back the property.  
20th 34<sup>th</sup> - is given up to the Law. This case supports the contract - 1.

Comp 32<sup>nd</sup> 7. To this Head may be referred those sagacious contracts which are made relative to the termination of a suit at Law -

There is another set of cases where error has a great influence in annulling them.

So in case of purchases where the parties were in error about a fact which was the line qua non of the contract. As where a few England boys have bought Lands of gentlemen of Richmond, Virginia. There was a great error about the quality & situation of the Lands but both parties were ignorant of it. The Court set this contract aside on the ground of Error. The fact mistaken was the line qua non of the agreement.

But altho a mistake is made yet if the thing about which the mistake is made was mere matter of pleasure the contract will stand & no compensation will be given. If the mistake was about a thing of convenience & utility the contract will still stand.

# Contracts

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Law. Sec.  
1844.

but something in compensation of damages will be given  
as where a man bought Lewis & thought him free

Powell puts what he calls an opposite case & explains  
this doctrine. Where one sold a girl settled in long cloaths for  
a boy, as a slave. The case would seem to come under the  
head of one that was void on account of fraud. But it was  
taken from *Lester v. Turner* & there the seller was ignorant of the  
fact that the slave was a female. Turner bought it of another.  
Here the contract might be void, for both were deceived.

But when a man sells a horse under such mistake & both  
are deceived the contract will not be set aside. But why is  
it not void? Upon the principle that seller supposed he was  
selling to the buyer that he was buying a sound horse. But the  
course of proceedings has been different & recovery has been had  
under the idea of damages, & the horse is left in the hands of  
the buyer. The buyer however does not want him. I think  
that such contracts should be considered as void for the mistaken  
part was the sine qua non of the contract, & I think the decision  
will eventually be so.

I presume in one party of what he had a right to  
know will invalidate a contract, tho there be no fraud  
in either party. These contracts may be set aside in  
Chancery tho not in Law. There was a case of this kind  
where a blacksmith (who cannot deprive his child of its  
orphanship part) made a will & in that gave a Legacy of  
£1000 to his daughter, on condition that she would relinquish her

## Contracts -

an orphanage fund, but if she took the orphanage fund she was not to have the Legacy. She took the Legacy not knowing the amount of the orphanage fund & signed a release of the latter. It turned out that it amounted to £40,000. She need not however by a rule of Law have made her election until she knew what the orphanage fund was, & on this ground Chancery set aside her contract to relinquish it -

The former part ignorance of ones rights & a contract made under it will be voided. There is no ignorance of a fact, not ignorance of the Law - Lg. & anti-legis applies to crimes, and I does not excuse -

Such was the case of the school master - this was in truth ignorance of the Law & not of fact & Law the contract was not void. It will now sometimes be, for it appeared reasonable -

O' Contracts to do what is impossible sh. done -

A contract to do an impossibility is not binding - Impossibility here means what in the nature of thing is impossible & not such as arise from the peculiar circumstances of the parties contracting.

As where one contracts to walk 5 miles in a minute or where one contracts at a time certain to furnish one with two devils - These were impossible in the true sense.

Where a man covenants to do a thing which

from his peculiar situation is impossible for him to do, he will be liable on the contract. As where one covenanted to give a good title of a Farm which belonged to another & which he could not buy here he will be liable on the contract. So in some instances in such cases will not decree a specific performance of the contract, unless it is in the hands over. But that he cannot convey - as where he owned the Land at the time of covenanting & afterwards sold it to another before the time to convey to the covenantor. In this case Chancery will compel him to convey under the covenant by a per alty, which if he fails will indemnify the covenantor.

There are in the books some cases, under this head & decided differently from what I should have expected, one where a man for 2000 sold 124 Acres of Land & agreed to give two hundred Acres on the succeeding Monday & to double them every succeeding Monday throughout the year. This contract is impossible to be performed for it would amount to more a tract than could be found on earth - 6 mod 305. The court gave no decision on the question, but it was evident this would have sustained the action, thus advised the parties to settle. But I think it was void on the ground of fraud for it was obtained by a man boasting himself of his own superior mathematical knowledge.



# Contracts

over the ignorance of the other & it certainly was void in the ground of impossibility.

Another case of this kind was the Barley corn case - where a man bought a horse & agreed to give one barley corn for the first mile, two for the second &c doubling every mile. This probably was not impossible but I should say it was void on the ground of

fraud - as in the last case - But the Court sustains the action & introduced a new rule of damages, viz. the value of the horse - but the real rule should have been the value of the Barley on the article to be delivered.

There is however an impossibility to be distinguished & I think such contract might be rescinded in frustration & the parties placed in status quo -

Where a contract possible at the time of making becomes impossible afterwards by the act of God or the Law there is no obligation remaining upon the person contracting to perform it.

Where a man has given bond for the appearance of one at Court, & before Court he is taken & committed or executed - this is not such an impossibility as is here contemplated. But when we speak of contracts which have become impossible by act of Law, those are meant which have become impossible by some positive Law made since the contract as formerly Clerks could practice as



# Contracts

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attornies, & after one had taken a fee for managing a cause, a Law was made forbidding them to act as attornies. He is released from his contract & his fee shall be repaid.

There is a set of Cases in the books which I think are settled wrong - It is a settled point that an agreement to perform an impossibility is void, but where a bond is given & in the condition there is an impossibility it is settled the bond is still good but the condition merely is void - now I think that the taking all the Golly or the condition is improper - The whole contract in the bond is nothing more than a covenant - The difference between them is merely in the form. If part is void the whole instrument should be void. The decisions I think are destitute of principle.

And in one case where the condition was in the body of the bond & impossible to be performed, the whole was properly vacated. What difference ought it to make if the condition is so placed that it can be severed with the remain from the rest of the bond?

Co. Litt. 200.

Plowd. 32.

1 Salk. 672

B. 11,

Megad.

## Contracts

Lecture IV. If the estate is given on condition that the grantee do such a thing, the condition is precedent & the use so illegal if not performed the estate cannot vest.

Of Contracts unlawful

Exp. N. S. lib. 59. 60.  
1807 Feb. 13. 420. 97.

These do not bind for it is an universal rule that the subject of every contract must be lawful & the contract is not binding.

But a contract having an unlawful consideration may be avoided at Law. I shall notice the cases where Chancery must interfere. Generally Chancery alone vacates contracts illegal on account of fraud.

Bulbin said, if a person  
wishes to enter into a  
contract to give out the heart  
of a man, it is unlawful  
to have him harmless, this  
is a good argument to the  
court in *Trotter v. Wood*  
in *W. 40*.

Every Contract is void, when the thing to be done is unlawful, or when the consideration inducing the thing to be done is unlawful, as if a man should promise to rob the promise would not be binding or if one should agree to give £10 to another if he would rob, he would not be bound to pay it. It does not alter the case if the man has done the unlawful thing, the promise to pay is still void.

Where these contracts are void at Law, the question is how are they avoided? If the contract is in hand the party must state it at large in his declaration; if it being void upon the face of it, the Defect may demur to it. But if one has given a bond or note of hand upon an unlawful consideration, say £1000 to hire one to perjure himself

# Contracts — Illegals —

19

here the Law looks in hard proof to prove the illegality of the Consideration —

There is this distinction to be noticed with respect to admitting hard proof in case where a contract is written — Hard proof cannot be introduced to show that there was no consideration to a written contract. <sup>i.e. a specialty</sup> In such case the proof must be of as high a nature as the thing to be disproved. But hard proof may always be admitted to show the truthfulness of the Consideration to show that it was made malum fieri.

2 Wils.  
Hartshorn  
Johnson

It makes no difference whether the thing is malum prohibere or malum fieri, which is the subject or consideration of the Contract. They are equally void. It is true a man may have entered into a contract lawful at the time of making, which by reason of a subsequent positive Law, it has become unlawful to perform. In this case if money have been advanced on such Contract, the Law gives an action for recovering it back.

But these malum prohibita may be so at Com. Law & of this the Court must determine. In such case where the contract is made void, no recovery can be had of money advanced under such contract, for the contract was always unlawful, tho never declared so by a judicial decision until now. Here the Court declare what the Law always has been. For instance — If an action were to be brought on a wagering contract in Bar — Altho by positive Law, the King. etc. were now bound to sustain actions on such contracts, we having now to govern us, should be left to judge whether on the

principles of Policy, such contracts should be void. We have a right in such cases to resort to such principles & if the contract was adjudged void, money advanced on it would not be recoverable.

A contract not to follow one's calling is not binding as it is against policy. But a contract not to follow it in a particular place would be good. See 18 W. 181 all the cases from 1740 to 1867.

Co. Litt. It has been holden that bonds given to a Sheriff for fees are void - but it is allowed in bond.

Howe. 68 2 Mod. 683. So where a man gave a bond to remain in prison until he should pay for his board while there or beyond - here after the debt is paid the prisoner cannot be detained for the bond is void. A man cannot by contract make himself prisoner. So of contracts of the like nature on any other subject.

A contract entered into with an alien enemy has been holden void as against policy.

Any thing ever so small which will tend to alienate all the feelings of a man from his country will render the contract void. As where one bet. that the U.S. by such a time would be independent, this was void, as it might interest the feelings of an obscure individual to have the event take place.

Marriage brokerage bonds are likewise void in England. I have never known an instance where they were vacated in Law, but do not see why they may



# Contracts Void &c

21.

not be as well as in Church Marriage brokerage contracts are those made with persons to get their influence to promote a particular match. Undue influence will of course be used; so such contracts are considered as destructive of happy matches & against good policy -

260.76  
261-  
199-  
230- All contracts which have a tendency to effect the violation of any duty or trust are void. as where one engages to give a Sheriff so much if he will suffer an escape.

Not only are engagements to do an unlawful thing void, but those which tend to promote or abet the doing of an unlawful act are void - as a bond to indemnify one for publishing a Libel - This is void -

There is however an exception to this rule of indemnity as where one who was to do an unlawful thing, did not know that the thing was unlawful: ex. gr. A Sheriff has arrested B unlawfully & brought him to the court & he kept him not knowing of the unlawfulness of the arrest or promises to pay him his fees. & tho he is liable to the party wrongfully arrested & imprisoned the Sheriff is liable over to him on this contract.

See Jan. 662  
Sept 53 But where the lawfulness of the thing is doubtful, persons, who are in tortious cases, it at his suit

261 p. 87. Not only contracts to indemnify one for injuring a third person, but all contracts which tend to effect a corrupt purpose are void as against policy - as where one wanted to be made a Bishop & laid a large wager with one who had influence with the King, that he should not be appointed at a time when many were to be. The Bishop was secured on the wager & was held not liable for it was to effect a corrupt purpose & operate like a bribe



## Contracts

To security can be taken which is good for an unlaw  
 Hows. 60-4 - full contract

Comp. 22-3

It has likewise been held, that all unnecessary  
 contracts which tend to oppress the feelings of third persons are  
 void as the case of the Liberator d'Or. It is void as another  
 house moves a tendency to interfere in a social manner.

4th. - right is conveyed to a person in a way  
 always of necessity be introduced, not under necessity.

A case has arisen in Court where a sold a farm to B.  
 & took notes payable at a day certain; & then came to under this  
 obligation that under the notes were all paid at the time  
 they were due. It should not have a lien of the Law.

The first note was not paid at the day of course the lien  
 was forfeited & still all the other notes remained good  
 & were collectable. An action to recover the notes judgment  
 in the S.C. was that money should be had, but this was reversed  
 in the S.C. House -

Contracts limited by Statute stand upon the  
 same footing with all others. All contracts at law, Law &  
 those not negotiable, do not change their nature by being  
 transferred to third persons, & when the property in them  
 is thus transferred, all advantages may be taken of them  
 by the obligor as long as they had while they remained with  
 the first obligee - and where a note or contract was  
 avoidable between the original parties for want of  
 consideration, it may be proved so, on suit,  
 by the second obligee - Here the general principle that  
 where a person has put it into the power of one

# Contracts - Void & Usury <sup>23</sup>

To decide where he himself shall suffer does not apply, being entirely contrary to the principles of Justice.

With respect to negotiable instruments, it has been supposed that when they get into the hands of third persons who can bring actions on them in their own names no enquiry can be made into their consideration & the instrument might have been void between the original parties yet it is good by indorsement. But if it is void at first, nothing will make it good against the obligor. Take a Bill of Exchange - The indorsee may go upon the indorser but I have found no case in the books where he has gone upon the Drawee; the Drawee will then go back upon the Drawer & then the consideration may be enquired into. I think the indorsee cannot go from the Drawee without submitting to the enquiry of consideration.

In all cases of contracts made under the Statute gambling & usury where the contract is void originally no indorsement will make it good. For the words of the Statute are "to all intents & purposes" Here the consideration may be enquired into between the indorsee & first obligor.

An instrument void at law. See however - when indorser is good as to the indorser.

any -  
Walker in  
Hepburn's  
Where a contract is void by reason of illegality in the consideration & money has been paid on it, & it is executory the money may be recovered back - as where a contractor with B to give him \$100 if he would run goods & make the duties - Here if the money is paid before the thing be done it may be recovered back; & if the thing be done before the money be paid it can never be recovered - I doubt the policy of suffering

an action for the money. It will be a stimulus to him to get it to back to break the Law by doing the act.

To all the foregoing doctrine there is a set of exceptions where the money for an illegal contract will not be recovered tho it be executed, the parties are considered in pari delicto. But where the Law was made up of oppression to prevent usurious contracts, tho the parties are in pari delicto yet one of the parties is favoured & the obligor may if he has paid on the contract recover back his money.

In this case, he recovers for money paid & received which is the same as a bill in Equity. He recovers the sum which in conscience he ought. So here one required £40 before he would sign a Bankrupt certificate. The money was recovered back for an undue advantage & had been taken of the situation of the Bankrupt.

Donch. & Evans  
vs. Bardin  
Hillb. 48 notes  
& Burr. 101b. -  
Couch 790 -

Lect. V - There must be a corrupt agreement between the parties to constitute usury. Where money has been advanced on an usurious contract the legal sum & interest will be obtained on that contract in Equity - & no more.

If one has obtained money by gambling as the parties are in pari delicto the winner will keep his money. It was formerly said indeed in case of usury that nothing could be recovered. Modern decisions are however the other way. I believe cases might arise where it would be doubtful whether the surplus could be recovered. But if there has been any extortion or oppression



# Contracts Usury 25

in claiming it than the sum lent to pay back

It is said that one cannot in good conscience break a salutary regulation of Society - But I should say conscience has nothing to do with those regulations which are merely the offspring of policy - There is certainly no evil in buying a dead in Linnen in Eng. yet in so doing a Law is broken & a penalty incurred - Now where one for the purpose of making an advantageous speculation finds it for his interest to have money at 10 % I question whether such lending would be unconscientious; & whether the 6 % could be usurious back. Where one owes another & at the time of payment is threatened with a suit unless he buys a Horse & gives double the value such contract I should say is void -

When joint partners enter into an illegal contract with another & one of them pays on that contract without the knowledge or request of the other he will not be compelled to refund or pay back the one half - but if it was done with his consent or consent he will be liable to pay a moiety to the other or where he did not prohibit it when he knew that it was about to be paid -

There are Statutes which make void the security only, yet which do not affect the contract. Thus the contract remains, but subject to all the inconveniences of being paid as if all usurious securities were void. The contract for which the security was given would remain a hard contract. The Law as it stands operates now both against the security & the contract -

## 26 Usury - Contracts

So it has been said that a minor who enters into a contract is void but the contract itself stands -

When one owes on account & by threats gives a bond for it, the bond is void but the contract continues.

In Eng. Stat of Gaming exemplifies both these points. By the Statute money lent to one to gamble with & security taken on the contract the security is void & the contract is good -

24 Mar. 1877. But where one enters into a contract & on it gives a bond to pay money even at gaming the contract & security are both void -

In Eng. there is a Law that where a man makes an annuity, unless he receives all the consideration in cash it shall be void. In one case goods were fraudulently paid to purchase an annuity - The annuity was held void - action was then brought for the goods on the contract. Powell says, that destroying the annuity did not revive the contract to pay the goods - But there was a hard agreement -

Thus there we come this with the general view of these Contracts - It may now be proper to mention some particular kinds of illegal contracts - The principal is that class called usurious Contracts - as to the history of them - At Com. Law there was not taking any interest, & any taking was usury - hence the word was idiosyncratic denoting something unlawful - all the personal estate of the Jews who had practised usury was seized at their death & forfeited by this wickedness - At length a little interest by common consent began to be taken - & a Stat. was made by which those who took more than 10% should be punished & the



# Contracts

# Usury<sup>27</sup>

Contract should be utterly void. To pay in 10<sup>th</sup> of Oct. might be taken - H. 1. The interest was 8<sup>th</sup> of Oct. & that is bar. 2<sup>d</sup> to take it. The sum of Ann to 5<sup>th</sup> of Oct. as it now stands.

Co. 67- This Stat. consists of two parts. It renders the contract void where there is more than 5<sup>th</sup> of Oct. reserved in it. But it never punishes a man for usury unless he takes more than lawful interest. In that case he is subject to the penalty. Where the obligation is on the face of it but for legal interest & at the end of a year 10<sup>th</sup> of Oct. is taken, the obligee is liable to the penalty of Usury, but the contract is still good. If however there was an agreement to pay more than lawful interest

Co. 508. at the time of making the contract, which may be shown by parol, the security will be void; or if the unlawful interest was included in a separate note the whole is void, it must however have been part & parcel of the same contract.

Co. 508. If a contract is ever had, unless at the time of the agreement there was more than lawful interest contracted to be given - Where one lent £200 on lawful interest & took a premium of a half per cent, the contract was void - This is in fact receiving too much & is the same as tho the half per cent had been taken from the same heap -

Co. 508. If interest is annual - But where one makes a contract to pay interest in 10 mos. he must do it, & if he afterwards borrows the £3 & gives a note for it, it is lawful & in this case the lender gets more than 6<sup>th</sup> of Oct. It is immaterial in what part of the year interest is paid it may as well be paid at the beginning as at the end - The Banks require it at the beginning - This is an infringement of the principle but it is adopted from convenience.

A contract to give more than 5% is never usurious where there is a real bona fide hazard of the principal as in the case of foreign exchange. But you must take care that the hazard is not colourable.

In the case of annuities upon lives, when the hazard is bona fide no matter if the 5% is treble legal interest for when the man dies the whole principal is lost.

If you go upon this principle in lending money to double in 4 years, the same rules then apply.

In the case of penalties where one agrees that if he does not pay by such a time, he will pay double here there is no usury, for a man may always discharge himself, formerly in case of such penal bonds the whole was forfeited but now they are changed in the eye of equity. Yet if there is an agreement at the time that the whole should be forfeited the contract is wholly usurious.

Where one in the sale of an article offers it for so much cash, but takes a note for it at 1% then more payable in 6 mo. the contract is not usurious. But

Case Jan. 508.

Moore 398-

Long 708.

where one undertakes to come usury by the appearance of a bargain, this will not secure him from the punishment as where one wishing to borrow money gave a large price for the goods & then was to sell them at auction to raise the money - this was usury.

See more at large Lecture on 'Usury'.

# Contracts - Usury 29.

Lect VI. Cases of sure bonds. If a Sayer joins to the principal are out of the Act. With respect to what is not Sayer, this is left to the judgement of the tiers. *See* 642. Sayer must always be of the principal & not of the interest merely. All the circumstances of the transaction must be taken into consideration -

*See* 642. When a man agreed to give for £100, £300 at the end of three years, if any of his children were living at that time. He had a son, a daughter & a son who were all dead. The same was not allowed.

A question important to be settled in the U.S. is on which little is said in the Books, in whether an obligation be given where it will be made, or where it is actually payable? or, suppose one in L. borrows money of one living in N.Y. who happens to be here the contract is of course really here, but to be performed in N.Y. can this note bear 4% interest? If a citizen of N.Y. had a bond of one of L. & being here took a new note the contract would be void but the security new & might bear 4% interest.

Should not a contract to be void in order to make the security void? It is then good on a proper construction. I should say a contract made in N.Y. might be void in L. where the contract was made by parties living in L. & being void to be performed here, & they just agreed into N.Y. to give the security -



## Usury

## Contracts

The lex loci where the contract is to be performed is said to govern. And when an Irishman in England borrows money to an Englishman to go to Ireland he may take security for Irish Interest - 1746.

Again no getting money into a bond at more than legal interest will make it void, unless there was a complete agreement or intention of the parties. So mistakes (which in such cases may be shown by parol) do not make a contract void.

A contract may be proved void by parol testimony & parol testimony may be introduced to rebut it -

But a mere mistake in point of fact makes void of Law will save a contract from being void. If there be no corruption there is no usury - It is a mistake in the mode of computing interest as established by Law.

A corrupted agreement is void, though the interest be paid.

Doug. 223.  
Cro. Elor. 20.  
1 Linds. 24.  
2 Mod. 30.

Comp.

If after contract to give usurious interest makes the original obligation void, but payment under it subjects to the penalties of the Statute.

If one enters into a contract to pay legal interest & pays down a premium over & above the contract & usurious agrees for the interest to be the same as the instrument purports -

A question has arisen which has been greatly contested. In this case is the penalty of the Statute incurred & the bond vacated? The premium was 800. the loan some 2000.

# Contracts - usury

31-

for a year. The penalty of the Stat is a fine -  
- entered unless the man has taken too much - If he  
there was not a taking too much it was only receiving  
too much -

You cannot make the same transaction go  
to avoid the obligation - since the penalty of the Stat.

Aug. 223

146. 290

18th R. 797.

nothing but a receiving too much makes the obligation  
void if nothing but a taking too much subjects to  
the penalty of the Stat.

816.

146. 260.

No man can be prosecuted on the Stat. subject  
him to the penalty of the Stat. without he has actually taken,  
unless some of his heirs may be -

as to annuities vide 6w. Jac. 253. 6w. Mon. 27. 1 ver. 164 -

Sect. VII. Sometimes taking a new obligation will purge  
the usury contained in the old one. This takes place only  
when the man who takes an innocent purchaser takes  
a new note - as long as the note remains in the hands  
of the first holder or in those of his representatives it  
will be usurious. The tenor is material. The reason  
where it is purged is because the obligor has abandoned  
his bond against the obligee -

It has been a question not decided in the Books  
where a man owes another £100 by bond & borrows more  
which is put into a note that is usurious afterwards the  
£100 is put into the usurious note Can there be a recovery  
of the £100 if the new note is usurious & the old bond is



The old contract would be revived & this is agreeable to analogy.

Twinn. Can a new trial be had inconsistent with the principles of Law where a man has paid Usury & has failed? I think not. 1<sup>st</sup> there is no instance in the Books & no instance of an application for one. 2<sup>d</sup> It is an agreed point no new trial can be had where no action has been brought, has been brought, & it has failed, except where the Defdt has been guilty of a breach. Now apply this to the present case - the Defdt has paid Usury. He has failed. What was the object of the Law? To do the Defdt Justice? no, for it frees him from all the debt. This then stands on the same ground with penal statutes. There has been no case of the kind judicially decided.

The power of Chancery over Usury is this in the English Courts. Men apply to Chancery to be relieved from an usurious contract, not to be in the entire contract set aside. Chancery then makes the rate of interest the Honour of good conscience. I know of no principle which would prevent this with us. But I think it is because our Stat. says a man who has an adequate remedy at Law shall not go into Chancery. But this is no answer, men often go into Chancery where in another point of view they have an adequate remedy at Law.

## Contracts Usury 33

In Connecticut we have a Statute of the kind, where once a man is sued instead of pleading Usury. He may file, <sup>a bill</sup> on the second day & by filing it has all the rights of a Court of Chancery to call upon the Opp<sup>t</sup> to declare whether there is Usury or not. & if so judgement is given for principal & costs only & no interest legal or illegal is allowed. If he will not disclose he will be nonsuited & not taken pro confesso as in Chancery - You can only call upon the obligee & if he be dead you cannot file a bill.

The effect of an Obligation to pay interest upon interest is not to make it usurious but you can recover only the simple interest. There is a rule of Policy - The Law is so made as to guard incautious men. If at the end of the time the interest upon interest is cast & added to the principal & said this is <sup>not</sup> usurious - In Connecticut you may have interest on a Bank debt after one year -

The mode of pleading is that such a sum was put in, included &c The precise sum paid need not be proved -

vide Lectures on Usury - from our Recue by J. H. W.

## LECT VII.

There is one contract which is illegal about which there is something peculiar. The trading restrictions upon certain trades. As when a man contracts with him to pursue his trade this is illegal from motives of policy - & the time for which it is to be continued makes no difference

11. Co. 53.

He may agree not to carry on his trade in a particular place. Carefully. Indeed the place may be overpowered & therefore beneficial to the public -

Cra. Ac. 576.  
Cra. m. 112-

This last contract must be upon a good consideration. This however is like all other executory contracts. By it is meant that it is a manifest exception to the general rule that you cannot look into the consideration expressed in a deed. Because you cannot get at it not because a consideration is not necessary.

Mason 118-

Str. 739.

3 Co. 242

10 Wm. 181.

— 191-

It is not true now that the want of consideration must appear on the face of the instrument - tho it was so formerly - In this particular kind of contracts you may go into the consideration by parol proofs, & if not found to be good you may set it aside - This is owing to the unpersonable light in which these contracts are viewed by the Law.

# Contracts - Illegal void &c - 35-

Contracts in Law or Equity to be destroyed, on account of them being made thro restraint, thro fear or Force -

Some of these may be annulled at Law & some at Equity  
Restraint can be at Law obtained by duress or force  
at Law - Restraint is obtained by less than duress & void at  
Equity - Every contract obtained by duress is void or  
voidable at Law - What then is duress? One of two  
kinds - Duress of imprisonment & duress per minas  
Either will destroy the contract -

Duress of imprisonment is where a person is  
unlawfully restrained of his liberty of free motion, and  
to obtain the liberty enters into a contract to give freely  
The restraint must not be in prison. It may be in the streets.

Duress per minas is where a man is threatened. This  
must be attended with certain circumstances. He must  
be threatened in such a manner as to fear the loss of life,  
liberty, or great bodily harm or imprisonment. There  
is some nicety about this, for what is duress per minas  
to one, is not so to another.

319- The imprisonment to constitute Duress must be  
unlawful, i.e. without authority -

Where a person is lawfully imprisoned a contract  
entered into between him & the party imprisoning is



# 36- Megal. Void - Contracts

q. ven. 3/11-1. Seminal goods sent to a street of them in  
317-13 any enforced himself, being in danger of  
317-24 being a threat.

Vol. 26-  
1 Jan. 68-  
q. ven. 326-13 The only imprisonment necessary to  
the person of a man is to make him a slave. The person  
is used as a block to obtain a security. A block  
dances - The distinction is of the law, and the use of  
as a block to obtain a security is not in law.

Vol. 315-11-  
2 Dec. 206-  
q. ven. 315-6 of a new relation is Dures. The books are contradictory  
318-20-  
Presuming from analogy a judgment a victory we think  
q. ven. 319-24 it was dures. If it is a contract to release the wife  
unlawfully restrained it is Dures.

as to father & son it is doubtful - as to any other  
q. ven. 318-4 relation it is undoubtedly not dures -

If you give a bond to release a stranger this is  
q. ven. 317/6-7) new dures so as to avoid it at Law. County however  
Ld. R. 354- would set it aside -

Dures by a stranger, at the request of the holder, is the  
same as by the obligee himself -  
q. ven. 316-3-  
317-24-  
11 Dec. 222-

Suppose a man is under Dures for money and  
gives a bond of £20 - dies of £40 - what he is entitled to give  
This is Dures, at the he consents to give the £20 -

q. ven. 317/10-  
318-24-  
11 Dec. 222-  
If a man is bound by Dures to provide  
to do a thing & consents, does it this is <sup>not</sup> dures  
but it is contrary to the principles of equity

# Contracts Should

37

Sec. 107

You cannot give Duress in evidence under the general issue except it be a paid contract. You must show specifically how far will equity go? The plea must be that of some great evil. The question is equity is, would this contract have been entered into had there been no law?

In cases of force under 2 Geo. 4th.

Sec 19 - It is not material how great the injury was the person himself  
24th. 11 - had committed, if he did not do it voluntarily -

Part. II Of those contracts, which are void at Law & Equitable by reason of fraud -

Fraud in Contracts, sometimes under them bond at Law sometimes in Equity, & sometimes in neither but the remedy lies in a Compensation in Damages & there is a necessity of an application to Chancery to prevent injustice.

1. Those which are void at Law by reason of Fraud - If the fraud is in the execution of the contract it is absolute - by this is meant if the person executes a contract different from what he intended.

(2<sup>d</sup>) When the fraud lies in the consideration & is not void at Law on the principle of the Game Law -

And respects real property Chancery will rescind the contract - There Equity does not enquire whether it is a partial or a total fraud - If the contract respects personal property in this case it is not uncommon for Chancery to rescind if the fraud is total -

# Fraudulent Contracts

Th. they will do either by rescinding the Contract, or issuing an injunction. If the Fraud is not total it does not generally vitiate. I then ask what is to be done? Is it void at Law? There is a compensation for a damage. I believe it is not possible to give back contracts upon which they were intended to make a person a person of Contract in a consideration where the practical right to be totally void.

There is one case in which you may bring an action at Law where the fraud is total, & that is where you have paid a sum of money for an article, & it is all pure unsullied fraud: the reason is the action for money paid & received is an equitable action.

In Con. is the great point as to compensation in damages we agree. But as it respects fraud in the consideration we plead at Law as if it was as usual & thus all our rules are formed.

Fraud upon Third Persons They are totally void. It is a principle of Policy. This fraud may arise in a contract of warranty concealment of facts which in good conscience ought to be disclosed is a fraud.



# Contracts <sup>1</sup> Fraudulent 39-

Lect. X. Fraud in the execution of a contract renders

Co. 9- it void at Law.

Fraud in the consideration being total  
will - can be pleaded -

All fraudulent contracts respecting realty &  
generally personally property will be rescinded in Equity.

Contracts obtained by falsehoods respecting personal  
property will be rescinded in Chancery as where Paisley sold  
their price for much less than its real value -

Chancery may interfere in a variety of cases where there  
is an unreasonable advantage taken of one's situation, & this  
will destroy the contract. The case of a contract requiring interest  
upon interest is referred to the read of unreasonableness but I  
doubt the propriety of it. This is founded in Policy it is oppressive.

Chancery will set aside a contract where an undue advantage  
is taken of a necessitous man - as where one who was  
thrown into a hospital shed a legacy left him to be employed  
after the death of a Lady of 64 a contract was made by which  
he paid with it at a small price & he was rescued on this  
ground Chancery interferes in the case of Usury - They re-  
scind the contract only so far as it is illegal -

Inadequacy of price has lately been made a subject  
for interference. It is said this alone has never been paid  
in a contract - yet it is said to furnish evidence of a fraud  
which is not of fraud but of some other vice which ought to rescind



## Contracts

1 Dec. 1865 -  
1 Mo. 176 -  
The Contract - A. if a man agrees to sell his land worth £1000 for 500 there is nothing in the bargain - His presumption may be rebutted - There is no case decided but it is the opinion of Lord Kenyon that inadequacy alone would vacate the Contract -

The true ground why Chancery interferes in these cases of fraud is that these contracts are unconscionable

A is very much in debt & oppressed by his creditors. B undertakes to be his friend, agrees to pay his debts & A is a man of large property & being pressed to get possession of his lands for one half their value the Court rescinds the Contract -

2 Dec. 1867

They rescind upon the terms of paying back if any thing has been received -

2 Dec. 1855 - All the case will be found to have proceeded on the ground that unconscionable advantage was taken, & the bargain was an unconscionable one -

1 Dec. 1861 - The Barley Case has introduced a new principle that where a contract has been made this unconscionable, you may recover the thing sold. They would not sustain the Contract according to an argument it is not placing the parties in statu quo. Here they consider the contract as good to the extent of the value of the thing sold but Chancery would

# Contracts - ~~Fraudulent~~ - 41.

have set it aside of course they do not proceed on the ground Chancery would have done -

If after the man knows how he has been treated with his eyes open to a perfect acquaintance with his legal rights will renew the contract & security, Chancery will not interfere -

I stand upon these persons - Under this head we include all contracts entered into with heirs for their

Mem. 75- benefit - These contracts may be considered as

280. 14- radically corrupt in Chancery there can be no question

304<sup>mem</sup> 292 they ought not however to be set aside under this head

note - for in no other contracts but these, as I have before

note. 320- stated on these persons & yet be so done away as that the

2 Ver. 159- Contracts may be affirmed - This is more properly

1 Atk. 301- conducible to the view of undue & unconscionable advantage

because it is taking advantage of a young man's necessities

1 Lalk. 156- These persons

1 Ver. 348- are persons upon these persons

How far this principle is carried. Some positions cases

1 Ver. 240- are all of the kind - They will be considered in Chancery with

2 Atk. 602- has lately been decided that an action on such cases

can be sustained at Law - This is in Disaffirmance

These contracts can never be ratified In one of

Mem. 475- These cases the ratification was made after the death

1844<sup>mem</sup> 496- of the third person but the contract was not held to be

binding.

# Fraudulent Contracts

(1844) - It makes no difference if these obligations are assigned  
Under the negotiable instrument the equity remains the same.

All these contracts would have been void at law had the  
System of Law grown up at the same time with the system  
of Chancery - There is no reason why such a loss  
radically corrupt cannot be avoided at law as well  
as ~~Chancery~~<sup>Equity</sup> will again a contract at law. In Massachu-  
-setts where they have no Chancery all their principles  
are drawn into this legal system -

Next of Cases where the party if he does not avoid  
his contract in Law or Equity receives a compensation  
by recovery of Damages - This does not include a  
recovery of fraud. It includes fraud in all those  
cases where there is either an express or an implied  
contract. In many cases of fraud include the breach  
of Contracts -

An express breach of fraud where there is no  
supposable contract an action for money had & recd.

Case. 11. 11. 11. - An action will lie for fraud in a contract

29. where the contract would not support an action - as in  
Moore 476. the case of Gaming - no action lies on a gambling contract  
but if one cheats in gambling an action lies for the fraud  
because there is an implied contract that the  
man shall play fairly -



# Contracts - Fraudulent. 43.

Collyer's  
Vol. 17-  
Page 91-101  
Lund. 31/2  
in 329-  
London. The most common cases of fraud are those of fraud  
in sale - you cannot make the cases agree - But there  
is no doubt of the Law on the subject - All the late cases  
go on the ground of sound morality - He said in the books  
if a man is in possession of goods & happens then to be told  
of a defect, an action will lie for the fraud, but if they are  
not in possession an action will not lie unless there is an express  
warranty - I believe there is no distinction - At the  
time Rolle wrote, the Law was much as it is now, but the  
intermediate cases differ -

Leck. II. What is received as the Law on this subject in  
Eng. is the Law here, because our Decisions have correspond-  
ed with theirs - All the cases in the Books cannot be  
reconciled with themselves or the general principles -  
I take the Law to be this, that if a man affirms a thing  
to have qualities which it has not it is a fraud unless  
he himself is under deception, & whether there is a warranty  
or not it makes no difference, If he sell an article for sound  
knowing it to be unsound it is a fraud - It is a secret defect  
which he is bound to tell -



2 N.Y. T.R. 48.  
Case of the *Barillette*  
Hood -

1 Bar. 52 -

1 Cro. Jac. 464 -  
or -  
Case of *Chaudelot*.  
Lohus. -

The Case of the *Barillette* is one where a man affirmed to take such a stone. The decision of the Court was that this was a fraud & yet the judgment was reversed because they say he did not warrant it to be so. By this you will see that the old cases are not to be relied upon - viz. that there must be a warranty. But it is said in *Roll* that this judgment was reversed because it was not plain that he was not known that it was not a *Barillette* stone. This however as the two stones would make no difference.

3 T.R. 51.

In the case of *Payson v. Freeman* you will find the idea entertained by the Court of fraud in such cases. Here it is said it is not necessary that the Defect

should be benefitted by the fraud -

2 Vast. 314  
Ind. & the same point  
1 Litt. 102. a. 1 Cro. Jac. 147.  
1 Sid. 146. 1 Galt. 21. 2 Bar. 12. 1221.  
Dow. 20. Allyn 91. 2 Wind. 198.  
2 V. & T. 228.

in all cases where a man conceals a fact which

good conscience ought to be disclosed & which has

1 Sid. 446.

1 Lev. 102 -

an effect upon the contract, the contract is void.

If he makes a false affirmation knowing it or not

to be so it is a fraud - If he warrants it knowing

it to be untrue it is a fraud for which an action

1 Roll 90 -

will lie, as well as on the warranty. The tavern keeper

when he sells ~~bad wine~~ is guilty of a fraud. If a man

sells goods having the possession which are not his

own knowing this not to be his it is a fraud -

Having them in his possession is said to be a fraud, but

this only proves that he is a rogue -

Talk 212 -

# Contracts *Fraudulent*

45-

It is said in Roll. 212 that if the man is not in possession of the goods, there must be a warrant to recover him; this is not so -

Roll 96 -

Affirmation of a thing to be so when it is really otherwise

In all actions on the case, it is 9<sup>o</sup> by Blackstone that not only warranties & affirmations lay foundation for actions but concealment of facts which ought in good conscience to be disclosed furnish a ground -

In all cases where there is fraud & warranty an action for the fraud is concurrent with an action on the warranty. But there are many warranties where there can be no fraud -

You must not found your action on the warranty unless it is made with the bargain. It must be on the false affirmation previous to the bargain, which if it is the bargain here there must have been a warranty. Neither warranty nor affirmation after the bargain lays the foundation for an action -

Co. fac. 630.

Tr. 44

If no receipt can be effectuated by the fraud no action will lie - The principle runs thro all the case -

Roll 101.

You may see a case directly opposite to the Law now advanced. This was where a man said, he had been offered so much, where he had not & knew it to be a Lie.

In all the torts but fraud where a man does a tort by his servant both are liable - Coercion is no excuse - This is a general rule, but the case of fraud is different - The master is liable - Where the servant

# Fraudulent Contracts

- 1 Robt. 75 - I have had some of a Tavern - I left it on the table.  
 1 Salk 282 - So I have a Tavern & I have some pieces - I do not see why  
 2 Co. 110 - the Tavern should not be liable in fraud as well as in other  
 torts - On the other hand the shopkeeper is liable for  
 1 Str. 653 - there is no cheating in him - He has been a man  
 who has cheated for him -

There has been a great question raised whether  
 a minor is liable in case of fraud? I believe the  
 1 Str. 129. 258. old authorities are opposed to the truth - the argument  
 1 Str. 169 - has been that a minor is not liable for fraud because  
 1 Keble 778 - he is not liable in his contracts. But minors are  
 905 - liable for their torts - What is fraud? It is a tort -  
 1 South. 71 - but then excuses him? Why say they because of  
 fraud in a contract - but the contract & the fraud  
 are two very different things. He may not be  
 liable on his contracts, yet he may be liable -

- 3 Barn. 1802 - again minors may be punished criminally -  
 3 B. & P. 223 - There have been some decisions contrary to the old decisions  
 12 Vic. 203 - Lord Mansfield thinks he would be liable & Lord Kenyon has  
 decided that he would be liable - Parker & Leeson have  
 said that is an action of fraud Infancy should not be plead -  
 1 F. & R. 335 - Lupton's case contradictory - not so.

Fraudulent Consequences - This is a nice &  
 interesting subject depending upon the construction  
 of certain Statutes -



# Contracts <sup>4</sup> ~~47~~ fraudulent

Where conveyances are made for the purpose of  
defrauding creditors the Statute of 13 Eliz. is  
void against all Conveyances prior & subsequent by the Construc-  
tion of the Statute - Where the conveyance is honestly volun-  
tary it makes a difference - Hence it is in consideration  
of marriage &c. the same as if it had been sold for valuable  
consideration in most cases - With respect to voluntary convey-  
ances where there is no imputation of fraud they are not  
void as to subsequent Creditors on the principles of the  
Com. Law - This not the case now - If he was not indebted at  
the time he made it subsequent creditors cannot get it -  
If he was indebted they can -

The ground on which the Statute goes is that indebtedness  
at the time shall be technically evidence of fraud. All these  
conveyances are good against the grantor - This is founded  
in Policy to discourage practices of the kind -

Section XII. My principal object will be to treat of fraudulent con-  
veyances as they respect creditors taking into view the Stat.  
13 Eliz. adopted in all the States - at the same time we must  
take into view fraudulent conveyances as they respect purchasers  
depending on the Stat. 27 Eliz. not adopted generally but  
in some of the States. You will find in some of the Reports, some  
opinions not perfectly correct, & that of Mr. Mansfield, that these  
Statutes have made no alteration in the Com. Law that they  
are an affirmation of it - These opinions do not tally  
with the case -



# Fraudulent Contracts

to fraudulent conveyances were void by the old Con Law  
as to existing creditors. In this point the Stat. & the  
360. 83 Con Law tally precisely. But the Stat. has carried the Law  
farther than to existing creditors. They were void as to  
subsequent creditors, only in case they were made  
void by the Stat. for the purpose of cheating & defrauding a Con. Law

Con. Stat. 444  
in 125

Since the Stat. such conveyances have been constantly  
made. But the Stat. renders them void as to every body  
except the grantor himself.

2 Ath. 601.

The rule as now laid down in this branch of law is to  
be extended to cases only which are merely voluntary & done  
with a design to deceive. But suppose there was no design  
to deceive & it was voluntary? There are some cases where  
such a grant has been good as to subsequent creditors.  
But this is not always the case. If I make out  
a grant of Land to A. when he was able to pay  
all my debts & have a great deal left he would not be  
supposed to intend to cheat but such a grant as this, is  
never good against prior creditors.

3 Ath. 410 -

2 do. 13 -

1 do. 94 -

2 do. 600 -

3 Ath. 64 -

When then is it good against subsequent creditors.  
It is never good if the grantor at the time was generally  
involved. There is room for the grant to exercise its  
jurisdiction. By generally involved is meant that  
it amounts to such embarrassment, as to be pushed by  
debts, not that he owes five pounds or a few pounds.

# Contracts Fraudulent 49-

Why is this? It seems the grant is to grant a conveyance without intention to defraud & not void as to all the debt, merely as such grant to a stranger is never good against subsequent creditors. —

When such conveyances are made the man is not intended to be made for the provision of a family but is good ag<sup>t</sup> subsequent creditors. — Consequently if he makes a conveyance to any other person except to one whom he is bound to provide for, it is void ag<sup>t</sup> subsequent creditors —

2d. 44. This provision of a family will not always be true ag<sup>t</sup> subsequent creditors — for the person whom he is bound to provide for must be a person in esse

And even this, provided it was done with a view to become indebted afterwards as a fraud ag<sup>t</sup> subsequent creditors. — This is the doctrine furnished for the cases — If then there is a voluntary conveyance with intention to defraud it is void as against all creditors.

Wes. 10-  
Atk 520-

How can you prove that the conveyance was made for the purpose of deceiving & cheating creditors? When the settlement is enormous, disposing of all his property & the grantor goes on in a regular manner & getting in debt for all these things will be left to the jury to weigh & determine accordingly.

The Statute says all this must be done with an intention to defraud — & yet they are void at any rate as to respects prior creditors, tho there was no intention to defraud. — But the volunteers hold the property subject to the Debts contracted by the grantor, except in the case specified —

How is this reconcilable with the words of the Statute?  
By an artificial rule of construction of the Statute presumed  
in Law that whenever the grantor dies and dies, there was  
an intention to deceive. This is a presumption of law which  
cannot be rebutted. The conveyance then was made with an  
intent to deceive manifested by contracting a deed afterwards.

Can. Jac. 158. How can this be fraudulent afterwards? Why I was afraid  
- what at first -

### Fraudulent Conveyances as to Purchasers -

They depend upon the Stat 24 Eliz which is not universally  
adopted here, tho it is in some of the States -

It is a rule that ~~will not~~ a voluntary conveyance  
is good for nothing as to subsequent purchasers. It is not  
strange that such should be the case in a country where  
there are no records of Land Deeds -

The Com Law makes all these conveyances good  
against purchasers -

By this Stat. it makes no difference whether  
the purchaser knew that the conveyance was made voluntarily  
to another person or not - Why is this so? Did he design  
to defraud or deceive any body? Why this we can't now tell.

But the moment there is an attempt to sell them, this is evidence  
that he did intend to deceive - His offering to sell  
shows that he meant to cheat. Therefore when the  
purchaser buys, he knows that the seller intended  
to defraud - His offering to sell furnished the evidence.  
This is not the denying that renders it void, it is the

560-60-

Amble. 288-

Comp. 208-



# Contracts <sup>4</sup> Fraudulent 51

intent to deceive. Whom did he intend to deceive?

Not the purchaser certainly, if he knew the fact, because

he knew he would not be able to recover the money.

10th. 15.

1st. 193-

Mod. 119.

2d. 113-

Can. 20-

1st. R. 1019

Can. 10-

Why go back to the time when the Statute was made - then

the intent was to defraud the purchaser - What was then

would have been an intent to deceive at the time of

making the Statute would render the conveyance void.

There are a great many cases where it is not sufficient

presumptive evidence only, but conclusive evidence. But it

is conclusive - & these cases are all weak in comparison

with the others, they contain some opinions of single judges

some where the conveyance was not purely voluntary -

Considerations that are valuable may sometimes be

fraudulent. Marriage Settlement. I consider as valuable

the voluntary, yet they may be fraudulent in whole or in part

if from all chance of fraud. It must be made in consideration

of a marriage to be valid. But how far may this be made?

Only for the support of the wife? Yes, he may limit it to the issue

& no further - There is a difference from money the limitation of the

collateral relations will be considered as voluntary without

being valuable. The limitation to the wife & issue can be made

in whole or in part.

It is not enough that the conveyance is not always void -

If the grantor does it in consideration of the time it is good

against all creditors but as to the issue it is void

against subsequent purchasers -

1st. 193-

2d. 113-

Can. 20-

1st. R. 1019

Can. 10-

1st. 193-

2d. 113-

Can. 20-

1st. R. 1019

Can. 10-

1st. 193-

2d. 113-

Can. 20-

1st. R. 1019

Can. 10-

1st. 193-

2d. 113-

Can. 20-

1st. R. 1019

Can. 10-

1st. 193-

2d. 113-



Mar. 1. 193  
Civ. Sec. 454

If it was made after marriage in pursuance of an agreement made before marriage it is good: the marriage is a pre-nuptial agreement -

But Sec. would a verbal promise to settle land be intended? One void by the Statute of Frauds & perjury - Clearly he must be compelled to settle because the verbal promise is void by the Stat. & yet if he does settle according to 214. 304 - the verbal promise is a good one if he has done it in pursuance of a written agreement, but recently it was held in an agreement on which a conveyance had been had -

### Lect. XIII.

St. 217.  
214. 18 -  
Civ. Sec. 181.  
11th 185 -  
214. 477 -

Does settlement made after marriage will be considered a contract. There is some consideration arising afterwards & unless the wife has a portion coming to her afterwards & was not sufficiently provided for before. The settlement must not be extravagant -

Trust Estates - of these the wife may be provided with an estate is given to trustees in trust for her - not to be sold or mortgaged or the husband. The owner of it as much as here the owner of any of real estate choses with this difference only that the trustees having the legal title it may not be sold or mortgaged by him he must go to the Court & obtain an order for the trustees to whom to recover it up under the husband make a settlement upon the wife - of course if the husband has made a settlement upon

# Contracts - Trusts -

53-

The wife in consequence of the stipulation of the trustees it will always be well because what is done voluntarily by the husband is no more than what he would have compelled him to have done -

2th 424 -  
ex. 6th 414 -  
re. 534 -  
alk. 67 -  
420

Yet even here there may be fraudulent for effect & extravagant & such as Chancery would not have considered it may be found - The nature of the estate & the situation of the family are to be seen -

Dec. 14. 22

Chancery would never interfere if the trustees are willing to deliver such -

1 mch. 121

3 Dec 18

Some of the cases before cited would show the same thing, viz that what should have been done is, and is here the husband does it voluntarily -

2 Dec. 18

1 alk. 429 -

578

3 P. Wms 177

3 Dec. 18 572

2 alk. 579 -

There is one sort of contract standing on a different footing, where a settlement may be made on the wife & it is not fraudulent - viz, where a trust estate has been devised to her. The executor refuses to deliver it up to the husband unless he make a settlement upon her wife. The husband wishes to sue the Ex<sup>r</sup> at Law, but Chancery issues an injunction to stay the suit until he makes a settlement. Such a settlement as this is good -

1 P. Wms 282 -

257.

257 -

With respect to trust estates, the rule is the same when the husband becomes a bankrupt. The assignees stand in the place the husband would have done & cannot get the property out of the hands of the trustees until they make the settlement.

There is a distinction to be observed when a husband assigns real & personal Choses, for he may do both legal & equitable, the assignee standing on a different ground when the chose is legal & when it is equitable. When it is a legal chose the assignee may collect it at law without making a settlement upon the wife, but when it is an equitable chose, the assignee must go into Chancery, who will not give it to him until he make the settlement. These equitable choses pass with all the equitable Lien upon them. These observations reach all the cases of real property—

But there may be a fraudulent conveyance of Personal property—Is there a remedy to be made as it is within the statute? Yes. But how can the Creditor get at it? Real property cannot run away, but personal can. The Law as it now stands is opposed to some decisions, but it is settled in a great question, in which the Chancellor says, the Law is to be refused—the remedy at Law is gone because he cannot lay his execution, but Chancery will look to the fraudulent donee—As to the decisions in which they say there can be no remedy in Equity, see *Wain 490* *viner Title Fraud. H. 169* *Carb. 149*—*W. & the last case is*—



# Contracts <sup>4</sup> Fraudulent <sup>55-</sup>

The Chancellor was down the broad proposition that no voluntary conveyance to defraud creditors was good, & this led to a question whether (whether a man could say anything would not be obliged to refund, the conveyance being voluntary) the Chancellor in his answer says, he would not interfere under the magnitude of the gift requires it.

But another question yet arises - The property so given away is not in articles - it was money - well said you can't expect to live - In the nature of things you cannot live upon it - if then he got a judgment at law, he cannot say when it comes on he supposes you must first see, get a judgment & then turn if you can - if not go into prison - but he could not have done so - this - that is the son? Why you need not just see - you may as directly say the Son - for if not the law will be evaded - & the case before cited warrants this conclusion.

You may say upon money, if you can come at it perfectly under our attachment law - but under our execution law you are to set it up at the host & sell it - strange indeed to sell money - that then is the son? Why then to say indeed I on the Exec - I say no more about it - But the difficulty is there is no Com. Law for this. In other words they direct this endorsement of money make Com Law - This will lead to mischief - the books book may be searched & so may all his books, thanks be & it is exposing to the world the money of the officer - I suppose he is guilty of Theft Law is this to be proved - In the case of other articles this difficulty does not arise



you will generally find them - You cannot  
 pocket a Yoke of Oxen - Sir Hardwicke says you could not  
 levy upon Bank notes, for they were money & had no ear marks -  
 of course by the Com. Law, you cannot levy on money -  
 If it be allowed in Com. Law it should be by force of a Stat.  
 but in Lat. Com. no such intimation -

To all the doctrine mentioned there is one exception  
 a man who was a weak man was prevailed upon by his  
 friends to convey away all his property to trustees for  
 his own use - This appears to be a reasonable transaction  
 yet it would not be good as to creditors - Would it as to purchasers?  
 It has been decided in Turner's case, 1 Bro. that such a conveyance  
 would be good as to subsequent purchasers knowing of the first  
 fraud will prevent the purchaser from taking advantage  
 of his own fraud - The fraud consists in dealing with a weak  
 man who has given an adequate price it would have  
 made no difference -

There is a very common mode of conveyance in  
 Eng. that is grants with premium procurator. A man seduces  
 a woman & gives a bond as the price for cohabitation. She can

rescind this on aple of the turpitude shown to such persons  
 Talbot 53. 3 P. 339 imposed upon by seducers - If he make a conveyance  
 to her & it is good, the illegality does not destroy it only as to  
 creditors, but it is good as to the grantor -

# Contracts - <sup>4</sup>Fraudulent

57

a conveyance to trustees to pay a man's debts requires  
 Chas. Ca. 241. Some notice - Is this not a conveyance so that creditors  
 1 Vern. 512 - cannot come upon them & take it? No: it would be considered  
 as fraudulent if the creditors would not take up with it -

Section IV - Conveyance to a stranger then is - fraudulent

Chas. Ca. 249 - conveyance to a stranger - conveyance to a third person to pay  
 1 Vern. 510 - No: it would not be good against creditors. No: it would not be the heir -

Suppose he should convey his estate to a creditor whom he  
 actually owes? This would be fraudulent or not, comparing the  
 debt with the thing conveyed. I speak here of an actual convey-  
 -ance, not a mortgage. If it greatly exceeds the debt it will be  
 fraudulent. But is it not good so far as it goes? No: there  
 would be a great many difficulties attending it. The creditors  
 would not know upon what part of the land to levy. Suppose  
 he cannot get his money unless he accepts such a conveyance.

Chas. Ca. 33 - why let him take a mortgage -

A conveyance to a stranger to pay debts is always good against  
 subsequent purchasers or lien - If the purchaser has no  
 notice of the prior conveyance it must stand like other cases -

Chas. Ca. 432 - A conveyance to a purchaser may be fraudulent when  
 - a full consideration has been paid for it because it is not bona fide

as when a knowing creditor is coming upon his land -  
 a manipulator sells it to B for a valuable consideration & immediately goes to  
 France out of the reach of the law - This conveyance is  
 fraudulent - I will now endeavour to point out to you a  
 question that is so much agitated & on which there are so many  
 different opinions - It is this - What is a conveyance to

## Contracts.

If fraudulently conveyed to C for a good & valuable consideration - C being a bona fide purchaser, knowing nothing of the fraud - are the laws in the hands of C liable to be broken or they would have been in the hands of B? This question as it respects authorities is said to be decided in favour of the bona fide purchaser - Others say it is not - for there are no authorities - The Law say the provisions of the Stat. must be defeated - that the nature of the contract as being void ab initio renders it impossible for the purchaser to hold it. I know of no authorities which decide the point directly.

Book

In Leon, this question has been tried up & there were four judges - two of them decided one way & two the other. The Chief Justice decided that the bona fide purchaser would hold it - but it is no precedent for it was afterwards totally decided that he could not - I am clearly of opinion that the bona fide purchaser can get no better title than the fraudulent one had - for 1. the Contract in whole word cannot by any thing ex post facto be made good - this however is a little too technical -

But if the construction will defeat the end of the Stat. in whole - how can you prove that C was a bona fide purchaser? No how - It is said this is in analogy to other cases, where the bona fide purchaser is secured - Thus even if A conveys to B for the use of C & D purchasers of B knowing nothing of the use - now they say the purchase is good -



Let us now discuss the legal title under B & then  
 to the conveyance that is necessary to give the use to  
 C. In *Wardwell* & *Ward* - But the case under consideration  
 is *Wardwell* & *Ward* so far as the statute - But *Ward* & *Ward* is  
 also good to which is not below to him & there is a bona fide  
 purchaser the purchase is good - but this is a principle of policy  
 But suppose a seller to B a note of C which is void can the  
 bona fide purchaser recover in the note? We cannot -

The only argument that has a plausible appearance  
 that such conveyance would be good is this - They say B can  
 do what A can do - could A sell to C? yes. well if so why  
 can't B? This can't be repudiated as a case? The following line

100 190

9437

1497

John 197

100 57.134

Bene 54

May 171

Mac 141

125

32/10

Barren 12.

Contra author

Col. 64.

For. 58

Jun. 56.

Att. 237.

ren. 188. 160

Edw. L. Di. Tell

Trans-

Edw. L. 161-

Declar-

The law don't go on the ground that A is disinterested in his debt  
 but only for B's sake the decision can't get anything unless it  
 is sold A is no longer & gets the money to pay his creditors But  
 say they let the creditor treat the money as if it was in the hands  
 of B & sue B & recover it. This is the only way to keep the argument

But there are objections to this. It is not known whether A is the  
 law - There is no case record that in *Ward* & *Ward* a bona fide  
 is obliged to change his debt for the benefit of *Ward*. This is a  
 legal objection - as to authority on this subject since 1 *Edw* 133  
*Edw* 243, *Thames* 423, 3 *Edw* 357. - There is no relation to  
*Edw* L. Di. Tell bona fide purchaser and *Ward* & *Ward*. See also *Ward* in  
 Trans- the transfer of real & personal property. But *Ward* & *Ward* 258 - Stat. of  
*Edw* L. 161 - Limitations on application to note - 1 *Edw* 374. *Edw* L. 185-6 -  
*Declar* - 2 *Edw* 26. 594. 602-3-4 - *Ward* & *Ward* 256 -



Contracts

On the death of the fraudulent grantor. How does the creditor help himself? The fraudulent grantee has it. Sure the Creditor had some way to lay the Person & the grant is good as to the land. The Creditor cannot sue on the principles of the law. Law the grantee ago. In fact the Creditor's suit may be brought nominally as to the land & you may lay it upon the Land; With respect to personal property you may sue the fraudulent grantor as a debtor in tort.

In Con. we have a different method & the land may be taken from the Creditor as agent for the creditor. Therefore the Creditor may sue the fraudulent grantee in tort for the creditors & them only.

Donatio causa mortis Is this fraudulent as it respects creditors? Yes - it is in the nature of a legacy which must yield to creditors. He acts for them.

Reb. XV. I take now a case of voluntary settlement which is good against every body. The person was not  
 30th 2  
 Re 6 442 involved at the time he made it. It was for the  
 444 purpose of providing for children who were & are at the time  
 1777 But there was a covenant between him & B which was  
 2 was for III was broken & actually violated. This covenant after the settlement  
 is made is broken. How is this to be considered as a predecessor  
 or as a subsequent claim. If the former the settlement  
 is good for nothing. In fact it is not. The real  
 question is was the person involved at the time so as to destroy  
 the settlement. He settles that he was not. This then is a  
 subsequent claim. It is not a delictum in present. delictum

# Contracts - Fraudulent

61

In futuro - It is not known that the man will break the covenant & the son does not presume that he will -

Had there been some action to void the title & have him go on - who because he used the money at the time -

If a man enters into a covenant & afterwards, any of the articles have been neglected, all there is a neglect to perform, & settlements had before covenant broken is good -

But suppose it was a Bond instead of a covenant & collected articles, the bond existing at the time of the family settlement & had a year afterwards the condition is not performed with then restore the settlement to the case, say it will be the same substitute of principles & Bond to be collected, they are more than a covenant to do the year may be over separate time in imagination, but you cannot because any is over on the bond than on the covenant. There is no more difference on one than on the other.

The Stat. 13 Eliz. has excited all the reasoning there was in man to get rid of it, & in one way they have prevented the construction of the Statute in the way that we follow now - L. knows it would be to purchase of L. a farm to give to his son A or to give him one of his own for he is very much in debt & of any sort that will place by which he should be enabled to pay his debts. Son will be disappointed - So he goes to Son B, buys a horse of him & tells him to convey directly to his son - Son does this - Now is the statute the Stat. 13 Eliz. all conveyances shall be void & when L. buys from S. L. the horse he has bought of L. & the Statute that it is void conveyance within the Stat.

See Ch. 477.  
See Ch. 977.

This difficulty can arise, he obtained a balance for  
 bro. J. 550. who will couple the one & convey to the creditors, when there  
 is actual fraud of the parties. And if the instrument is a mortgage  
 see *Chesapeake Bank v. Freeman* from which not a word can be taken  
 2 Vt. 481 -  
 1 Vt. 46 - This kind of 'fraud' creditors -

A better method has been suggested in law. The end to  
 very well - he may make it a voluntary order to his  
 son as to any one to whom he wishes to convey. He may not  
 pay the taxes & proceed by the voluntary order given & record  
 where he lands. This is fraudulent & void as to creditors -

If the obligor in the bond is dead, then it may be tried in  
 another way - the 'ex' may refuse to pay it when he has  
 1 Atk. 65 - no right to pay it because the debt was paid. If he is paid  
 he may file a notice of debt and attach same about the estate -  
 there may be a simple contract debt, or operation.

In the former case the creditors may sue the obligor  
 2 Vt. 362 - then upon the date of the execution of title will be obtained  
 come up an execution on the same -

I have found a case where the conveyance will not of  
 course be argued into when these persons are concerned  
 + not it will be void - as to have a conveyance of title of  
 sale of this property (this was known to B - was fraudulent -  
 after the C obtained a judgment against which was fraudulent -  
 C seemed to rely upon the property - C had conveyed to B -  
 Can C do this? etc, they have both fraud on their side -  
 C is one person - but there was another - But how can  
 B fight out whether it is fraudulent - he may come into the judgment



# Contracts - Fraudulent 69

It must follow then that in every case where you find an assignment made, you look into the consideration for it there is fraud.

Now there can be no question of this here but then a man may say he has made a transfer giving preference - What the nature of the contract? And how was it made? as between a man & his wife & so - I do - with her but only £20 - now in the principles of the law, can he give any more? But a husband has a duty to see that he gives & pays all he is worth to his wife & her debt.

There is a conveyance to pay a debt, is it fraudulent? The essential question is whether the consideration was adequate enough -

But I utterly at law cannot agree in this notion & again added that it is good, it is a bona fide conveyance to a bona fide creditor - There there is no case of fraud -

I can make a few observations upon Lamer case 1 Co. 81 - Where a leading case, & is in substance this - he owed B £200 & C £200 - 6 weeks before day the debt & also had paid 300 makes a conveyance of L's B in satisfaction of L's Debt this was all he had in the world - a conveyance in possession & used the property & carried on with his debt & recovered judgment & carried upon those goods - B came of the Sheriff claiming the goods as his property for which he was indebted - Now did B own these goods or not?

There was no doubt but that the consideration was sufficient. Well what was the difficulty? There here he left in my opinion the goods - but even the conveyance in possession made of good law? Can there be any doubt? Yes, the law presumes that there is a trust where a man is in possession after he has conveyed away -



But after all this is founded in policy to prevent every creditor generally & purchaser - the law has in leaving the property

can be said to infer that always leaving property in possession will be held to make it liable to creditors - Suppose I had my horse to a man to go to market & he sells it must I lose it? No: But suppose I hire it to go to Georgia & he sells it can I recover the horse? No. But where are we to stop between the horse & Georgia? That is, is given us? Why if the nature of the bailment is such as will tend to decide the leaving in possession will be of use & I must infer -

See *Case Perotti* - A voluntary conveyance - a voluntary conveyance is always treated as a subsequent purchase - under stat 25th - But if a man should make family settlement in consideration of marriage this would not defeat of these be property enough to pay the debts it is good - These voluntary grants are as good as any other of the grantor & all claiming under him - Therefore the force there is a conveyance made it is thus law good at least -

alone a ~~under~~ articles solemnly covenants to convey voluntarily These articles can never be enforced - The Ct will support the conveyance but not the articles - This is analogous to a promise to give a horse this promise can never be the foundation of an action - But may not these articles be void on at Law? Yet, because every sealed instrument implies a consideration but not the grant of it & since you can only recover nominal damages.

9 mod. 80-

11 Ben. 406

10 W. 635-

See *Bl. 1st*

1st -

See, 725

Lord Nottingham said of this Stat. that every line of it was worth a subsidy. Ed. King says this one of the wisest laws in the Stat. Book 1682-1691. It was drawn up by Sir Matthew Hale Sir Tr. North & Sir Poline Jenkins -

**Act III.** I call in this Section give you a general view of the Statute of Frauds & Perjuries -

This Statute consists of Five branches -

\* I. I say that no contract by an Executor or Administrator to pay money out of his own pocket is good unless it be in writing.

\* II. A man shall be bound on his promise to answer for the promise, default or miscarriage of another unless it be in writing

III. A promise in consideration of marriage is binding unless reduced to writing -

\* IV. A contract respecting Land, tenements or Hereditaments or any thing growing out of them is good unless in writing -

V. No parol contract whatever which is not to be performed within one year is good unless reduced to writing -

We will treat of these in their order - 1. 2 & 3 - 725 & 726 see in 14 Stat. 75-80. vide Stat. 12 Geo. 3. 75-80.

I. No Executor or Administrator can sue for money on this subject. I do not know that the Stat. has made any alteration on this subject. If one had made an agreement before the Stat. & then had been no more in the case it would not have laid the foundation of an action. A contract is necessary before

III. A promise to pay for the debt of another & see Statute in full of cases out of the Stat. Many parol agreements of this kind are binding. One thing is certain whenever a man gives B money to be applied to B's promise that he will pay a debt of theirs is nothing more, it is not good unless in writing. But if C by his promise causes the original obligation against

see cases in the  
- 725 of 1673.

the original obligation to be cancelled, he makes himself liable. When then, is any the security of the promise of him who comes in at the first the promise lays the foundation for action the bond: but if the two securities remain the bond promise is acting usually & this is the true conclusion - You must remove the new consideration does not take it out of the Stat. It is cancelling the old one - & the rule must have been continued before the promise -

The old original contract may under certain circumstances remain in existence, & yet the verbal promise be binding - This applies to cases when it is in truth the case that B has used, & got a security & C by promise to pay the debt causes B to release the security - as where A has given a note to B of £50 B has attached property sufficient to secure the payment & comes & says to C return the property & I will pay you the £50 - the bond promise is binding -

The rule then is this - a promise to pay the debt of another is always binding when it is the case of cancelling the original security & also when a new security is given & the security to remove the original one is given up - There is one case seemingly obnoxious to the principle when it is in fact however it falls within the rule completely -

A brings an action of assault & battery against B - C says to A withdraw your action & I will pay you £50 - A does withdraw



# Contracts Ed. Thoms 67-

Ballou's de bridge in section of 6 in the north corner  
of field - because it was for the purpose of another -  
The same the original owner of 6 of the other side was not to  
be changed - that in long a subsequent - a bar to an action  
for the same cause & the case is within the rule. This is not  
the case in law not so any of the U. S. that I know of -

III, A promise in consideration of marriage - The one man  
promising to marry the other - and promise to marry the other  
settles the case & the case is settled -

IV, All contracts expectant on the death of a person are not  
considered in interest in land but paid within the term of the  
Act. But there are a vast many cases out of it. A man  
cannot make a lease by parol not even for a year  
altho it has been a recessive idea that this might be done  
In long under certain circumstances a man may make  
a lease for 3 years - there is no such exception in our Stat.  
I do not mean that one who enters on the land under a  
parol lease is a trespasser - He is a tenant as well. To be  
sure if he does go on & improve he must pay for it -

There is this principle on this subject if a man should  
make a parol contract to sell land & he would refuse to carry  
it into execution to make the other conveyance & there  
is nothing more on the case the other conveyance -  
But if he makes use of this as a trick or device to get any thing  
out of a third person - he may be compelled to perform it  
as a case of specific with Wife a tenant for 20 years, to  
have a reversion to him. & to give him a lease to hold in  
time - and as you may see the reversion now & I will give  
you a lease at any time - The man was to build a house &



He did so & sold the same - & then was driven  
to sell a horse & could not but was driven off -  
There is no necessity for the purpose of  
force & get a horse sold - & thereby compelled  
him to slide by his contract - Further - Whenever  
lands are sold at public vendue, these vendue sales  
are not within the Stat. In these cases there is no  
requirement in writing, but the Stat. don't consider them  
within the spirit & meaning of the Stat. which was  
meant to prevent fraud, & prevent & remove land sales -  
Vendue sales are not subject to these evils - The sale is made  
before the world & not liable to their objection

There is another set of cases out of the Stat  
wherever the contract has been carried into execution  
either in whole or in part on one side, & accepted on  
the other, & he refuses to carry his part into execution,  
he will be obliged to do it - & where agrees to convey  
to his friend & does not convey, if he will convey his  
estate over to him. & does not convey, & then  
refuses to convey the same - & the court will set  
aside the conveyance of the land - & the will go farther for  
if he accepts the conveyance he shall execute the  
contract on the part

There is one great principle running through  
all the business which is this - There is no necessity  
that the contract should be in writing at all,

assuming that you can get out the evidence, even the one  
 from parol proof to the time of the contract.

A gives a Bill in Chancery to Lin & the other  
 with making a contract to convey the farm on such day  
 as comes into the day, then he dies and leaves a promise  
 but that it is void here within the Statute of Mortmain  
 the Statute is so, for if he does he shall be bound to  
 pay in compliance the contract.

Such is the nature of the Statute that the  
 contract from which an inference can be drawn that  
 such a contract was made with made it void - the  
 inference must be such as a common sense will get over  
 the Statute contracts to be performed within a year & the  
 must appear so from the terms of the contract & execution  
 but if it appears upon a contingency which may or  
 may not have been within a year the Statute of Mortmain  
 The only question that arises is a law in the common  
 course of things the contingency would or would not have  
 happened within the year. If the Statute is not intended to be

Book XVII. The first branch of the Statute relates to ex  
 & a dim<sup>er</sup> is not sec. that the Statute has made any alteration  
 in this subject - one reason is this - I will as I said of the Statute  
 to the Com. Law. I have an Ex<sup>or</sup> or a person who comes to pay  
 a debt - that effect would be done? to give more than it had before  
 an Ex<sup>or</sup> is liable to pay if he has assets - as if he is liable

Now by the Stat the Contractor is obliged to pay in bond. He is obliged to do so if there be no other promise made in writing. 5 Barb. 10.

In an action for non performance of the promise, it is not necessary to prove in the declaration that it is in writing, except to procure a written agreement in evidence at the trial. 10 Barb. 579. 3 Wm. 1890. But a plea of tender to the action will not deprive the plaintiff of the sum for the payment of money into Court when that sum is deposited and the cause quitted. 10 Barb. 586. R.

But if such agreement be pleaded in bar to another action it must be shown on the face of that plea that it was in writing, else it would not suffice. That I was an agreement in a trial in an action to maintain. 10 Barb. 580.

See further at this subject in the Stat. 4 Barb. 10. 7; 7 L. R. 353.

If not there may be some other Stat. for the promise. I believe the Stat. says he shall be bound unless the promise was in writing. The Stat. would mean that he was bound if he did not make a writing. This is only for implication. See also whether in this case he would be bound if there is no consideration. But suppose it had this effect? It had been the same before, if there is a case in which the Stat. upon the subject is altered. I do not know it. The object of the Statute is to let people know that a verbal agreement made before the Stat. were good which were not now by the Stat. I shall therefore leave the brand of the Stat.

III. No man shall be obliged to pay when he promises to pay the debt of another unless it is in writing. Would he have been before? undoubtedly. Here is a man who wants to trade with A - he don't know him, he says, "Trust him I will see you paid." This promise is not binding. It is to be sure made a good law bond as it is now in writing. But this Stat. has been so construed in that there are many cases which are completely out of it.

L. R. 1085. - 5. 1. m.  
248. 7 C. -

The clue is given as in the Stat. 99, but this is not expressed. The principle is then - Where the original promise



# Contracts - Frauds 71

B. & P. 158.

remains in full force & a promise to make to the claim it must be in writing - or in other words if the last promise comes only in aid of the first it is not binding, unless reduced to writing; otherwise it is binding when the whole credit is given to the last undertaking & the first is completely destroyed - for the last undertaking is an original & not a collateral one -

1 B. & P. 232. - In this case the declaration amounted to this - as is about to see B. & P. say proceedings of 13 & 14 vide law the Debt. This is clearly within the Stat. for the original claim is not lost. To have made the promise binding it should have been in writing & it would have been good for these reasons - consideration enough -

1 Wils. 305 - This was where a sued B. for assault & batteries & B. said "withdraw your action & I will satisfy you" this was not within the Stat. for the original debt of B. was gone by reason of the retract which as before observed is in one a bar for another action in the same cause -

2 Wils. 94.

Further if a man has a security, a competent Lien upon property to pay his debt (as if he has attached property) - & if he gives up this security by reason of the said promise of another to pay the Debt the promise is out of the Stat. & binding, altho the original claim be so -

3 Burr. 186 - Lippin & Wilson - The Law is stated by Sir Ketchum in one of the counsel in this case correctly & not denied by



*Contracts -*

the Court. The case was this. By the custom of London when a man becomes tenant in another man's house, & where he hires a room & he engages to pay - sent the Landlord & have laid upon all his property in the room to have the rent. This is as good to him as a collateral pledge. A tenant who had hired a room, found himself in failing circumstances, called together his creditors & they agreed to collect all his property, make the best of it - & let him go. They appointed an agent. He took possession of all the property & also the Furniture. The Landlord tell him he can't take this away - that he has it as security by Law - the agent says he knows it, but that the property must be carried out & that he should have his whole Debt. The Landlord was quieted - The property was taken & distributed among the creditors. The Landlord on refusal said the agent, on the promise & he plead the Stat of Frauds & Begins - But the Ct said he was bound by the promise altho the original security was in full force -

side of the room  
out of the flat  
in charge of p. 123  
p. 123  
p. 123

5 mod. 213 -  
This promise must be altogether to pay the Debt  
/ another - & it is to have a joint claim agt them in  
Lawson, 17 - they appear as joint attorneys to him when  
they had no authority - I was about to see them & a promise  
to pay the damage - thence under the Stat & binding -

# Contracts Part of Promises 73

It is not for the purpose of a debt

A man may be bound by an express agreement to pay for some service, but it may be difficult to recover out of him because it may be construed into a mere courtesy & you can't recover out of him unless there is a promise - but if there is a moral obligation

2 Vent. 223, 7 R. 201

1. In this case

of the Act.

5 mod. 265.

125 / 126, 373.

28 / 29, 188.

28 / 29, 325.

18 / 19, 188.

18 / 19, 188.

18 / 19, 188.

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18 / 19, 188.

to pay the promise, & good tho not in writing - as where a physician is called to visit a pauper not by the collector, but they promise to pay him - This promise need not be in writing - This sort of case does not fall under this Act for this is not a promise to pay another's Debt, but a promise to pay their own

A Debt & says if you will let me have such good I will pay you - This promise is out of the Stat. It never was to's Debt it was A's - But if he had said if you will pay you I will this is within the Stat. & must be in writing

261 - A promise in a letter is a good promise to bind a man

262. Promise in Consideration of marriage - It is

one or two of the first cases went as far as a promise to marry.

This is now settled to be otherwise. This is not within the

Stat. This branch of the Stat. refers to marriage provisions

a promise between the parties to settle land in consideration

of marriage is never taken out of the Stat. by being partly

executed; because it would destroy the Stat. & make it nugatory.

As to a promise for instance made by a father "if you

marry my daughter I will settle so much upon her" - This may

be very good, as it is executed on one part, & is not a promise

between the parties -

There is a case admitted to be out of the Stat. The

words of the Stat. are, any contract respecting Land tenements

in *Hammond v. ...*, or any intent in about or voluntarily themselves the question came up whether a valid agreement to sell land was binding on the land and out of the fact that B decides that it was

1 *Ed. 2d* 187 because it was not contemplated by the fact for the moment it was

11 *East* 362 <sup>October</sup>  
and <sup>Page 3.</sup>

at down it became a formal contract.

**I**

Contracts relating to land are binding on the parties to them in the absence of any other agreement in writing where there can be no doubt of fraud or perjury they are

1 *Wes.* 215. 121 - not within the fact. On this ground there is judicial opinion

later. There are only 15 cases. There is no hazard of fraud

or perjury or negligence of the terms of the contract.

There is another clause of the statute under which

it is said all contracts above £10 must be in writing -

1 *W. R.* 599 -

9 *W. R.* 249 by statute. There was an instance of a sale at venue above £10 -

3 *Burn.* 121. 7 *East* 578  
memorandum by statute page

by Le. Mansfield auctions in general are not within the statute see via 2 *Ed.* 180 2 *Ed.* 180 3 *Ed.* 180 4 *Ed.* 180 5 *Ed.* 180 6 *Ed.* 180 7 *Ed.* 180 8 *Ed.* 180 9 *Ed.* 180 10 *Ed.* 180 11 *Ed.* 180 12 *Ed.* 180 13 *Ed.* 180 14 *Ed.* 180 15 *Ed.* 180 16 *Ed.* 180 17 *Ed.* 180 18 *Ed.* 180 19 *Ed.* 180 20 *Ed.* 180 21 *Ed.* 180 22 *Ed.* 180 23 *Ed.* 180 24 *Ed.* 180 25 *Ed.* 180 26 *Ed.* 180 27 *Ed.* 180 28 *Ed.* 180 29 *Ed.* 180 30 *Ed.* 180 31 *Ed.* 180 32 *Ed.* 180 33 *Ed.* 180 34 *Ed.* 180 35 *Ed.* 180 36 *Ed.* 180 37 *Ed.* 180 38 *Ed.* 180 39 *Ed.* 180 40 *Ed.* 180 41 *Ed.* 180 42 *Ed.* 180 43 *Ed.* 180 44 *Ed.* 180 45 *Ed.* 180 46 *Ed.* 180 47 *Ed.* 180 48 *Ed.* 180 49 *Ed.* 180 50 *Ed.* 180 51 *Ed.* 180 52 *Ed.* 180 53 *Ed.* 180 54 *Ed.* 180 55 *Ed.* 180 56 *Ed.* 180 57 *Ed.* 180 58 *Ed.* 180 59 *Ed.* 180 60 *Ed.* 180 61 *Ed.* 180 62 *Ed.* 180 63 *Ed.* 180 64 *Ed.* 180 65 *Ed.* 180 66 *Ed.* 180 67 *Ed.* 180 68 *Ed.* 180 69 *Ed.* 180 70 *Ed.* 180 71 *Ed.* 180 72 *Ed.* 180 73 *Ed.* 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Contracts - W. J. Francis

growing not within  
lat. 6 East. 602. 11 do. 362

Int. 6 Carl. 602. 11 do. 362

He miss<sup>d</sup> - stack seal

and for 7/4, 420, 900

ut an. 1000. 1000. 1000.

Pow. Ser. 276.

571er 523

325. 2.

173. 64

LXXVIII

1. 182.

2 Kern. 261.

The next letter I came to her and after that, collecting

to chest and we take them out. As in the two men  
toms in the last lecture of building a new or contempla-  
tion of having a taste -

Under this Head have been referred the cases where the contract has been executed on one part -  
 viz: However is a much agitated point, whether money paid is part executed. There is no doubt of it -

Here it is decided that payment of money was a duty.  
 Consider as a part execution

There then arose a question whether evidence of payment  
ought to be in writing? This case says it is not necessary -  
The proof was by oath - It was sworn to have been paid -  
It was not proved by a receipt - The Stat. does not intend that the  
payment should be in writing - but that the original contract should  
be in writing - I suppose the evidence of the payment may or may not be in writing  
we - I suppose the evidence of the payment may or may not be in writing

Specific performance in one part involves a total contract.

their success has actually been greater than  
past performance. The true ground is this. The man to  
whom the Fund is sold must necessarily be put to expense  
in moving & obtaining possession & therefore himself will  
interfere. So it is not necessary that there should be an actual  
payment of money as expense of the kind just mentioned.





of a promise & they compelled him to abide by it. You cannot enter into a vol proof as to the terms of the contract, but you may show facts which prove the existence of the contract.

It has been decided in *Corb* whether an inference can be drawn from any facts. However the *Inv. Act* is decisive on the subject in the *case* of *Leeds*.

*Salob* 61 - In this case the question was whether the instrument was a mortgage or not. There was an absolute conveyance - & some evidence may be had as to the facts. This would not be done if the deed was per se conclusive evidence of an absolute conveyance.

These contracts must be in writing & must be signed by the parties that are to be charged thereunto. Some questions arise upon this - It was contended strongly that the contract was stipulated to be in writing & must be in writing. But there is a difficulty - It is to be put in writing? in certain cases. In *two* cases to be put in writing - of course the end of a promise & giving rises - hence a stipulation to put it in writing is not sufficient & it is to be put in writing.

*Ken* 15 - 189 - It is said in the *act*, then must be some record - some memorandum in writing -

*2. Ch. 412* A memorandum in writing was made between the parties, but finally it was not executed. was this sufficient? The writing must be signed & must be witnessed that this was not sufficient.

*44m* 740 1 *Cressy* King was born in this case as in the *act*, stipulation was made & all reduced to writing. One party, however, did not sign. The master some other person in it was his own time & gives it to the scrivener to draw over again. This done & he refuses to sign it upon a meeting of the parties was this enough? The *act* says No - There is a locus *pro interfecta* until the man signs it. *Leeds* &

This has been used as a precedent for those on there had been a past execution. Therefore no more decrease in specific performance —

What then constitutes a signing? There need not be any signing at the bottom to make it a signing —  
 18 Op. N. R. 190.  
 21301 N. 239.  
 1 do. N. R. 254.

If the person is authorized to sign the instrument with a view to bring the contract into execution it is signing sufficient —  
 The rule then is this — If the person signs it with a view to be bound by it, it is a signing —

A body has entered into a contract & has an interest in the estate to be conveyed. The act of signing & signing it as a contract to be submitted to the Court & has to be bound by it — for that was the profession —  
 1 Op. N. R. 32 —  
 He intended to make the contract, believe that he was about to be bound by it & of course he ought to be bound by it —

There is a case that there is no such thing as a contract to be bound by it — but we have no case on that. It is one to do one thing & the other another, & only one party has a second if it is all in some cases binds them both — as a here a is entitled to sell B a farm for \$1000. B covenants to give the \$1000. Here in writing — It is signed by B & not by A —  
 1 Op. N. R. 353 —  
 a brings a bill agt B to get the money — "B says 'a' has never signed the covenant & is not bound therefore I am not"

1 Op. N. R. 20-1.

What does he say? Not that he is willing to convey, for if he was not bound in the first instance he is not now. But the Ct say — "B you must pay this money, because A is bound" He drew up that paper, he gave it to B to sign. B did it & took & accepted it & he now relies on it. Therefore the



Contracts - *See* *Pauls* <sup>79</sup>

1582  
East. 169.  
F. Allenby.

*Sigara* of B. & C. *Hydrophilus* for *C. hantoniensis*.  
*Conchostoma*, of the case - authentic, 1<sup>st</sup> April new Ash in writing.  
 184 N.S.B. M.

T. Contracts to be performed within one year so that if the terms of the contract are such as cannot be performed in the course of a year & the contingency is such as according to the common ordinary course of things, & the business cannot happen in the time of a year, & the contract is made <sup>now</sup> ~~now~~ <sup>at</sup> ~~at~~ <sup>on</sup> the 1st of Jan. & the year is 1858.



# Interest in Contracts

Plowden 432

Y<sup>e</sup> is a promisee (not done) but by a contract  
eventually entering into the business unless it was for  
an actual or potential interest in it. - L<sup>rd</sup> A makes  
a grant to B in which he covenages to B all the wood then  
and there here for 10 years to come. Is this good? - Why  
yes - Nothing better for B than nothing at all at the time  
of the grant -

Hobbs 132

When the same principle is made a lease of land  
in which he has no interest & B makes a covenant to pay  
£40 rent. It says B in this case & B comes in & pays. B  
had no interest in the land & therefore the covenant is void  
that he can do -

Co. Litt 141

Another case - A grants to B. of B shall execute a  
note within 10 months, note should be void. The covenant is  
void, it would be a grant -

If a man makes a grant of a thing which he has not  
& afterwards gets it he cannot plead that at the time of making  
the contract he did not have it. He is estopped by his  
covenant, for by that he has covenanted that it is his - Yet  
the B had no interest then - But then I think do think of principle

to potential interest would do. This is exemplified  
in the wood case. He grants all the wood that shall  
grow on the which the wood grows. The grant is good  
there is a potential interest. If a man should grant  
all the produce of his field which was growing it would  
be a good grant -

Robt 32

# Contracts — Consideration

81

Section IX. I shall in this Lecture consider the consideration of a Contract & demonstrate its 'Consideration'. We are told that to render an executory contract valid there must be a consideration for it. This subject is very poorly understood as to authorities. & no treatise except Powell, Chalmers or Considerations (which is by far the best I have seen) explains it.

Question on Con.

3750

34816

the doctrine of Powell & Chalmers seems to be supported in the cases

upon on Con. given

As a rule the quantum of the consideration is not material, as a pebble coin or a pint of wine is said to be a consideration. The consideration must be of some value in a pecuniary light & must be a benefit to the promisee or a detriment to the promisor. It is not necessary that it should be a benefit to the promisor provided it is a loss to the promisee. The consideration may be either a benefit to the promisee or a detriment to the promisor.

The rule is not broad enough to cover the whole doctrine for there may be a consideration where there is no benefit to the one nor loss to the other. It implies something is to be done on the one side but not that it should be a loss to him. Lord Mansfield says the definition is not broad enough but does not give us the rule —

A promises to B, if B will marry C he will give him £100 — if B does marry C, he is entitled to the £100 — It may be a loss to B if B does marry C, he is entitled to the £100 — It may be a great gain. & this is the presumption. The law is not in consideration.

Suppose A promises B, if B would get himself a new coat, he would give him £10 — Is it good? This is a questionable case, but I do not know but there is consideration enough.

goods for money & no  
the said not earnestly given,  
for payment, nor the goods  
of them delivered;  
for the money & the  
but the owner may sell  
other these things he  
but in more expense  
in 30s. 30s. 30s.  
ab. 224. Enders at  
found to sell goods to  
a certain time at  
to determine whether  
buy them or not. But then  
intended to buy them  
thereby, yet that  
it was not possible for  
him to do so, for B not  
using the original  
law is not in consideration  
693. vide also Holt.  
R. v. B. 20. 20. 20.  
R. v. B. 20. 20. 20.  
w. 20. 20. 20.  
extra as there is  
consideration to be  
seen

There is a loss by his taking in, getting the new boat & in this way the definition may be broad enough -

The origin of this business is this: formerly if there was no an equivalent on one side then exchange being on the other - On this principle there must be an exact value - This was departed from as being a thing wholly impossible & by once departing this value was no more - & so on any scale down the consideration is almost nothing - There must be a consideration & not a contract of there be no consideration & no medium of action.

This case is not applicable to all granted contracts. If A gives to B a house he can never claim in return at the time, no consideration but if he had promised to give him one the house is in an exchange agreement & not leading for want of consideration. However the gift is valuable to the donor & executor but not without it is necessary as personal right is gone the moment the contract is executed -

There is no doubt when the gift is of personal property, but that it is good & valid in respect to real property there is a question. The rule as laid down is that real property will always pass where there is either a good or a valuable consideration but if neither in the case it will come to the grantor himself.

If a husband comes to an other danger without cause, money or marriage, or good will & natural affection a father cannot do so! The Court said shall come to the use of the grantor himself.



## Contracts Consideration <sup>83</sup>

I will now endeavour to point out to you how this form of  
confeignment came to be used - During the civil wars  
in England between the houses of Lancaster & York it became  
common for men to make grants of lands to their own use -  
what was understood by this? The truth was Lands were all  
confiscated by Treason. This obliged men of great nobility to convey  
away their Lands to an obscure individual reserving the use of  
themselves - and it was a rule of the common Law that an use  
could not be confiscated. - Thus if I am a nobleman. I do grant away  
my reason to my steward a man not known secretly the use is  
himself - By so doing he had the use & he demand the legal title -  
He would then - and now are our Lord & Master &c &c. He was  
killed in a rebellion would have a support. This became so common  
a thing that when a grant was made from A to B without any  
consideration it was a fair presumption that it was made for the  
use of the grantor - This was the reason of the words enjoying to the  
use of the grantor - You will remember however the grant never  
supported the use - He was not - That the use was not the  
title was in the grantor - much in the use. I will now that the  
grantor requested the legal title to the use - He  
demanded the title - In the latter case the grantor  
But another thing has arisen since which I must now  
grant to the use of the grantor. The first of these is that a man  
may grant to one for the use of another - He should  
not in the use mean so where one granted to A for the use  
use of A in himself - of course when a grant is made to  
B for his own use the title is in B, but when it is made to B



immediately by the words of the Stat. <sup>There is no applicable</sup>  
 is a Stat. in <sup>there is no Stat. of Uses & if there is on</sup>  
 the construction in Engl. would not obtain there, because  
 that grew out of the peculiar situation of that country at  
 that time - I have nothing further to observe on executed  
 contracts - on executory contracts there are many  
 observations to be made.

A contract executory does not rest upon  
 parol, but it is reduced to writing - Does this make any  
 difference? There must be a consideration in a parol  
 as well as in a written contract. Yet they differ in  
 some respects, for no parol proof can be admitted to  
 shew that there was no consideration when there is  
 one expressed in a written contract - You may shew  
 that there was consideration in a written contract  
 but not by parol proof - you may shew by a writing  
 attending the contract, or the contract may shew it  
 itself - Suppose then there is no consideration  
 except the words "value received" Is there a consideration  
 expressed? Can this be enquired into? On the princi-  
 ples of the Com Law you may - but do you not  
 contradict the contract itself? No, you only  
 contradict the opinion of the Craftsman.

3 Binn. 571 (Carter)  
 Michael Phillips v. The East  
 India Co. 1795 in 2 Binn. 571  
 which decided that a verbal  
 agreement is reduced to writing  
 & is enforceable unless a consideration  
 is proved.

# Contracts Consideration. <sup>85-</sup>

and it is the usual practice in notes of hand where is expressed value received to shew there was no consideration if there was none.

One thing further - with respect to a mere written contract - The contract does not express any consideration at all - Is it negatory? Does it stand on the same footing with a parol contract? The presumption is against such a contract - but you may introduce hard proof to shew that there was a consideration.

"I promise to pay £20" Can you aver there was a consideration for this & prove it by parol? Yes. you may introduce parol proof to what stands well with the contract but not parol proof to what contradicts it -

This is not however a mere written instrument - It is sealed. There is wax upon it - Need you now aver that there was any consideration at all in your declaration? You may recover on it without this averment. Why so? It is a principle of Law & that is all you can say about it - Your sealing imports a consideration. It is a presumption which cannot be rebutted. A presumptio de jure. Remember it does not import the quantity of the consideration. It only imports that there was a consideration -

Further - If a Seal a bond to B (& bonds have no consideration stated) you recover the whole sum on the bond - but in the case of a Covenant, you go into an enquiry & it may be

that there will be nominal damages only. Hence it is that in a House you recover the whole sum & not on a covenant to do a collateral thing. You must recover the whole on a House from certain Principles of the Eng. Law - because in the form of an action of Debt you must recover the whole or nothing - But the Law says you must recover something, therefore you must recover the whole.

But in an action of Covenant you go into the quantum of damages, because this action sounds in damages.

Again, Chancery will never execute such a covenant as this where there is no consideration only the sealing. This will leave the parties to fight it at Law -

There is a case I have seen in none of the Books - An Instrument is written & sealed for consideration is detailed at length - & from the instrument itself there appears to be no consideration. Is this contract good? I should say No - The sealing is a presumption of consideration so that nothing out of the instrument can be introduced to show there was no consideration. But the presumption arising from the sealing is rebutted by the instrument itself which shows that there is no consideration. Of course it is an universal rule that on an executory agreement which from the instrument itself there appears no consideration there can be no recovery -



# Contracts 87 *Consideration, Past*

With respect to past consideration it is said, where the consideration appears to be past there can be no recovery. Suppose A had been to D & had come across a man attacked & had given Bail for him, & he tells D that he had done it. D says I will remunerate you. Is this binding? No —

Whenever one does a thing for another at his request it is not a past consideration. This distinction is to be observed — If the past consideration is actually beneficial to the promisee he will be bound by it. If it be not beneficial, he will not. As if A goes to work in B's field without request & afterwards B promises to pay him this consideration altho past, yet if beneficial, will bind B.

§ 11. XX. By a past consideration is meant a promise

to pay for services that have been rendered. As the Law now stands I conceive this definition is not perfectly accurate, for

such a promise would be a good one according to the rule laid down above. So much is however true. If one

has done another a favour without a view of reward the promise is of no avail — If he did it at the request of the

promisee, the promise is binding —

§ 12. I apprehend there is no way from case to case seen in a law point that it should be done with a view of reward to someone as a person dependent upon a family living on it expects a reward not compensated.

ind. 564.  
note

I.R. 20

W. 39.

Fac 18.

Reg 282

Acton 84.

272 a.

Ch. 11. 2.

1. 106.

Pe. 933.

Surm 17. 71.  
40. 224.



## Consideration

## Contracts

3 Burr. 1491.

I enter service without an agreement, a promise for for those services is binding —

2 Bask. 505.

This may however fall under another rule viz.

1 Cowp. 288-90.

-544

Bul. N.P. 147.

Here a person promises another that under no legal obligation to fulfill the promise yet it is under a moral obligation.

3 Bury L.P. 240 n.

5 T.R. 690

Bul. N.P. 945.

Bul. N.P. 41. note

x In which notice of discharge is given

to discharge yet subsequent promise

to discharge the debt

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to do the promise is binding. This is a moral rule & will

apply to a great many cases. But see 3 Bask. 249. note —

In this promise a debt is created by the Statute of

discharge is given notice of discharge is given

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2 Bury. 184

In case of an illegitimate child where the father was consulted about putting it out to board in a particular place — and the promise of it — An action was founded on this promise to pay for its board — There was no express promise it was only a moral obligation binding upon him

as he consented the child should board there

There is a case where an apothecary was called upon

to furnish something for a pauper without consulting

the overseers — The overseers promised to pay & afterwards

refused but the 6th held there was a moral obligation

imposed on the overseers — It is in this way

have been bound without an express promise —

We support such actions — The case of a widow promising

to keep the child of her husband was held to be binding

Bul. N.P. 147

129. 281.

I'd see the term

moral obligation

explained in 3 Burr

1 Bul. 250. note

Pro. 475.

# Contracts - Consideration - 89

He was under no moral obligation to pay the Debt of  
her husband -

There is another branch of this business, which must be  
noticed - On some contracts no recovery can be had unless  
notice of the liability be given - Notice Sumner & a special  
demand are very often conformed, but they are two distinct  
things - In some cases notice is necessary & in some a special  
demand is necessary - Sumner There is an agreement in  
which something is done for the Deft on consideration  
of which the Deft. is to pay - the Deft. is not so circumstanced  
as that he may know that the thing is done, notice ought to  
be given - There is no duty incumbent until the thing is  
performed, & it is unreasonable to call upon the Deft. until  
he knows the thing is performed. You may always know this  
from the contract itself. In order to keep up the distinction  
I will state two cases. - J. sold to H. 10 cord of wood. He paid  
30 to sell, & the agreement was that H. should pay him for  
the 10 after the rate for which he should sell the remaining 20 -  
He sells the rest & without notice sues H. for the 30 - He  
did not recover, because either there was a duty incumbent upon  
the Deft. he did not know & he did not & therefore notice ought  
to have been given -

Again; - The rule is, not only if the Deft. did not know  
but notice need not have been given if he could know -  
a sold to a load of Wood upon condition that he was to  
give him as much as J.R. gave him - The wood is

is delivered but not paid for - If A sues B without notice & recovers because B is accessible to A - He might have engaged B to pay - The elementary writers say it must be more knowledge - The cases do not square with them - He did know more than B -

Upon this principle of unreasonableness to sue without notice, exclude the same law cases of this kind -

A owes B a sum of money - B can sue him - But a day will you take an order on B? Supp. says B is a man so well enough as in a government - He does not receive the order to B. but prefers to pay it - Now B can't sue A without giving him notice that B has dishonoured the order, that he won't pay it -

It is here a man can't know in such a case if he does not know it is his duty to pay, notice is necessary - As a rule, B is bound to note & then have been a number of payments - They come to a settlement & find A has not paid £10 - A can't turn right round & sue him notice must be given him. In all these cases there is no necessity of a demand for the money. The duty to pay arises immediately upon notice being given -

There is a case in the Books not contradicted as far as I know which is difficult to be reconciled with the third case - A has borrowed to pay B a sum of money when he married - It was a Debt incumbent upon A to pay when



# Contracts - Conditional<sup>th</sup> 12

91.

B married. After B married sometime he gave a note without notice to his wife. The bond - 'in B's right' - but he has thought on more and a matter of necessity. He might have given an occasion for notice.

But there are cases where there must be not only notice but a special demand also. For thing is clear many cases arise where a note is payable upon demand and there is no demand so necessary. And there are other cases where you must make a demand. If it be a special demand it must be said so in the declaration. No 'ten pounds' & demand is not enough. It is said in every case.

As to what a special demand this rule is laid down. It is a good one as far as it goes but it does not reach all the cases - viz - If there is a precedent debt there is no need of a demand. This is true. If it is to be a collateral note on demand no duty arises until demand. This rule will answer to a greater part of the cases. I think I can give you a rule that will reach all the cases - It is this - 'I have not seen any above'.

If from the nature of the contract, the promisor can discharge himself by tender no demand is necessary. If he cannot so discharge himself a demand is necessary. This may be exemplified in cases - A promises to pay B a sum of money on demand. He can discharge himself by tender no demand then is necessary.

A promise to deliver B 20 bushels of grain. He may tender it & be discharged. Consequently a demand is unnecessary.

But if a teamster says to B I will give you a note to pay £ 10 in April or Demand, I have no money I must pay you in any way -

183

588

33-

33-

88-



## Contracts

Debt is to be paid, the note. This debt cannot be discharged by a tender. Therefore a demand must be made & no duty arises until demand is made.

The nature of the contract will always point out to you where you can make a tender & where not. If the man can make his election, there must be a demand.

Sue Bills at a store all as on this account. Where demand is against a corporation your must apply to its Treasurer because he is not supposed to know all the debts of the corporation. Moreover, this is an exempt case - differing from the rule - for if the Treasurer knows of a debt he may discharge it himself by a tender.

In a declaration where a demand is necessary that demand must be stated. If it is not, no verdict can come on the declaration. A motion in arrest will be sustained. For there is no right to recover without demand. There is nothing in the case that the Jury will always find the demand & then their verdict is for the Plaintiff. The Jury find nothing but what is alleged. They may find the demand if it is stated informally so that it would be as on a special demurrer. But if it is not stated at all they cannot find it.

Long, 654.

Contracts that have been considered as ineffectual at Law to recover upon may be considered in Equity not in the same point of light. Equity gives them another complexion. If a man is bound with a condition to convey Land that is forfeited has this at Law? It would seem that the man might have his election to convey the Land or pay the Bond.

For a long while it was considered that a Bond  
given to a woman by her husband to marry her or was  
void after marriage & being a chose in action. By a late  
case it is decided not to be void. Under the old idea the  
compromise to 50 + 50 was to get a specific performance of  
the agreement. If it had been an agreement no doubt it  
would have been good. If he comes into them & she is well  
founded in an agreement. In a great case a Bond was  
brought & the question was whether it should be considered  
as an agreement; & it was so considered.

So where two enter into a joint Bond & one pays the whole sum, how is he to recover one Half only? He can be over the joint obligor at com. Law. In Eng. they never had an Idea that they could - They considered that two ~~was~~ an aggressor &









Contracts

The implied contract goes very far - It reaches  
 man cases where all ideas of a contract are excluded -  
 It will be taken notice of in these kinds of cases. If a man  
 should ever buy a note by mistake there is an implied contract  
 but the idea of an express contract is some way to the very  
 meaning of the word mistake. If a man should give money  
 there is an implied contract that it should pay or be returned.  
 The Law is not founded in this case upon assumpsit or contract,  
 but on the idea that a man promises to do what it is his  
duty to do - as in the case where a man turns his wife  
 out of door - there is an implied promise that he will pay  
 whatever subsists for her for this is his duty to support her.

I shall point out to you where these actions are concurrent  
 with express & implied assumpsit. I shew only one can  
 be brought & shew where other actions are concurrent.

Wherever there is an express contract to pay a "certain"  
certain sum may bring either. The Indebtedness always  
 creates a contract for it creates a duty & this duty is  
 the foundation of the contract. Of course there is in the case  
 an implied contract & that there is an express one is clear -  
 so you may bring your action on the implied contract or  
 on the express one. & in the latter case the evidence of the  
 implied contract is the express agreement. But best  
 to lay both in the same declaration you may have two  
 counts. The suitors to the express contract may not  
 remember it but you may know (as for instance that

## Contracts

you told him a horse that you did not sell him, & you will receive as much as he is worth - to no more than you has in the declaration. In this case you may say Dolt also because there is a vicinity of conduct. This is seldom brought. It is come out of case because there is an old case that upon an action of Dolt grounded upon an express contract unless that contract was reduced to writing the party may waive his Law i.e. the Dolt may come in & swear that he did not owe any thing & if the other neighbor should come in & swear that he saw truly the Dolt was gone - so prevent this by being assured held & inserted that he fraudulently & craftily intended to & then the waiver of Law cannot be made - for a man cannot deceive himself clear of fraud -

If the promise was to do a collateral act, there is no Dolt the remedy is in damages of course in action of indolentia assumpsit or Dolt will lie - there must be an act or omission -

In the case of warranties where there is a promise to produce at the time of the warranty you may bring your action on the warranty, or for fraud. We see then an express contract where the sum is certain or stated in implied assumpsit will lie. Where the promise is to do a collateral act there must be an express assumpsit where there was paid & a warranty you may bring your action on the fraud or on the warranty -

Contracts

I will now consider when an implied contract will lie in the same cases. An implied contract is always concurrent with held in a quantum solvendi because, in common est, quasi certum modi testis; & an express contract will not lie, because the express terms of the consideration are not agreed upon. So in the case of money loaned where there is no express contract Debt Law does not apply. Implied contract is always brought.

Sometimes this action is concurrent with Freehold or Tower. As where A goes into B's field & takes finds steals his horse & sells him - Here a may sue B in Trespass or Tower or bring an action for the money in Debt him for converting B's horse as his agent to sell the horse. In this action you are to waive all lost.

If money is taken from you by violence or undue pressure it amounts to robbery. Here Debt is action for money had & received - If money obtained by fraud which is money received you may bring an action on the case for the money received or an action for money had & received -

There are cases where implied assumpsits only will lie. They are few & far between.

Where the consideration happens to fail there can be no enforcing the contract; as where it happens this mistake is not found. Thus a sell Land to B without covenanting to warrant & suppose it is his Land - receive the money & he happens

# Contracts

not known it indubitable, assumpsit only lies  
The extent of this action then may be seen from this  
view. It is said an action of assumpsit will not lie where  
a man is to the money & another a bill for money not in  
good conscience to retain. And this is not true enough  
It will not always. This may be true even in cases that  
where money is in the hands of A which he ought not in  
good conscience to retain an implied assumpsit will lie  
if B is responsible of taking that money from A. To the  
indebted man recover a debt in good conscience. He ought to  
if he is responsible of taking the money from A.

Burr 1512.

This action is maintainable where the person is indebted  
in a sum certain, not in a bond secured by promise.

This action is as extensive as a bill in equity can possibly  
be. So you may bring an implied assumpsit for money  
obtained by extortion. So every thing on the other side which  
may be produced to rebut an equity may be introduced in  
this action.

Burr 1010.

Before this action for money of these things you  
was obliged to go into equity. This now a settled rule that  
where one man had obtained money from you by deceit  
this action will lie. Formerly it was not so. As a husband  
who had a wife, carried a woman who was ignorant of his  
prior marriage, married her & lived with her some time  
& received the rents & profits of her farm. Afterwards the husband

Case 28.



Contracts

was discovered. The action for money had & received was brought against him, & sustained.

So where the consideration is shown to fail then mistake the action lies.

1 S.B. 732

But money & land goes was  $\$0$  for the grant of an annuity. The annuity was not good by law of course he could not recover on the annuity. an action of assumpsit was brought to recover the money, & was sustained -

Palm. 864

So where there was a promise to lease from one man to another & before he has obtained the lease the lessor was evicted. an action of assumpsit lay to recover the money.

It is a rule that where money has been paid under a void authority, you may recover it back in this action -  
 A owes B a sum of money & to forge a power of attorney of B's name & employs D an attorney to sue it. To prevent suit A hands over the money to D & D to B. Then B sues A & sues him, for his liability is not gone by the payment to D who acted under a void authority. He must pay -  
 and the question arises now whether he can recover of D -  
 'He is an innocent attorney' The Ct seemed to be of opinion that he could recover of D - as far as this the case goes, if the agent receives money <sup>for</sup> the principal, & pays it over to him the principal having the right you can't go against the agent but must go to the principal.

# Contracts

Stamphill 101

1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup>

But where the authority was all void, you may recover out of him who acts under it. But the question is, is a void authority? The cases on this point are said to clash with each other. They are 1 Lalk. 27 & 3 Lalk. 125. In these cases, the question was whether money paid over to an admt or ex<sup>r</sup> who had no authority to be such, could be recovered.

If these two cases don't clash with each other this principle stands uncontradicted, viz<sup>t</sup>. Where the authority given is a competent authority, that authority is not void.

1 Lalk. 27. Letters of administration were granted to a certain person, no will being found. Afterwards a will was found. Mean time the admt collected money & afterwards there was a repeal of the letters of administration. Now in this case the question was whether the money could be recovered out of the admt who had rec<sup>d</sup> it under a void authority. It was declared it might be & properly declared. If he had rec<sup>d</sup> the money & had no power, would he have been liable? No. He is not liable further than Ex<sup>r</sup> in law is wrong. If no will found, he is liable as far as the property goes. But see 2 Ld. R 1210, also 4 Burr 1986 where 1<sup>st</sup> Manly declares he went to the goes - case in 2 Ld. R is different to that in Lalk.

3 Lalk. 125. A forged a will. They supposed it was a good will.

Coward & a sum of money & dies. A forger the will of B & is Ex<sup>r</sup>. He sues C & recovers the money & afterwards it was found that the will was forged. A dies, & an admt is appointed, & the question was whether he could recover the money out of the hands of C? not out of the hands of the admt as in the last case. The Ct say No. Now in Lalk the action was ag<sup>t</sup> the admt. In this case

## Contracts

to pay the money to one acting under competent authority. These cases are totally different & do not at all clash with each other.

3d R. 124

1st R. 742

A drew two bills at the same time in favour of B or C & accepts them both - one of them was lost & B found it & showed B's name on it & came to C for the money to pay it. Then B called upon him, who never had indorsed & refused to pay him. B sued him & C was helden liable.

This action will lie for money obtained by extortion, oppression & taking unfair advantage, in short in any case where a C of Change would rescind the contract.

A has promised to B plate on a certain day & he was to pay the money & receive the plate. He went on that day & tendered the money to D who refused to deliver the plate unless he paid him more than was due. He did so, & then A brought an action to recover the surplus. Now it is said the man might have discharged himself by tender & then brought D over for the plate - but the 1st way the man wanted his plate - it was an extortion to take the money & therefore A shall recover it back. So if money is obtained by unfair dealing this action will lie.

Doubt. 651  
notes

Analogous to this is a case where a note was given on a compromise by the creditors. This was a fraud upon the creditors & ought to be destroyed by Chancery - but it was taken an unfair advantage of the man's situation - action was brought on the note & he could not recover, & if he had been for the note, it might have been recovered back by this action.

# Contracts

Stamps 103

Lect. XXII. It seems to have been a principle of the Eng. Law that no action to recover is maintainable against a person who has committed a felony, & if a person should steal another's horse the way that originated was this. There was a forfeiture of all goods & chattels by means of the felony & therefore an action would be ineffectual. There is nothing in the reason of things for it, & this principle is not adopted in the U. States. Therefore an action lies for goods stolen as well as for a cheat. In Eng. we have a Stat. giving treble damages. I mention this because in Eng. they have evaded the principle by bringing an action, not charging him with stealing, but with embezzling the property & taking it away, after having been previously entrusted with it. There was the case of a householder who could not be supposed to have the charge of money in the house - but an action would lie. Indeed it is nugatory in the government to take all the man's money or property - let the individual who has suffered be paid for it.

Where money has thus been embezzled (as by a clerk) & paid over by the person embezzling to a bona fide receiver, you cannot recover out of the hands of the bona fide receiver. This is upon the same principle with all cases of money. If I had cheated you & had paid it over in this way you could not have recovered of the bona fide receiver. Money is a circulating medium, & it would be dangerous to have it recovered -



## Contracts

So money or bank bills cannot be recovered - This differs from all other property - for if a steals your horse & sells him to B a bona fide purchaser, you may recover him from B's hands.

The Ct have said that if the money had been paid on an illegal contract you might recover it. Thus where a clerk embezzled money & p'd it to a lottery ticket insurer - This lottery officer had committed an offence by issuing, & the question was whether the owner of the money could recover out of the hands of the officer? The Court decided that under the circumstances of the case he could - It is not obvious why this was thus decided -

Camp 87- The officer committed no offence as to the owner of the money -

But it may be good policy to prevent such insurance

This action of Inhibition cannot lie where money has been p'd on a judgement which has been reversed -

It is otherwise - Attempts have been made formerly

to recover upon the ground of wrong - that the officer

having no authority took the money, & that Trespass

would lie ag't him who employed the officer - But they

were fruitless - Trespass will not lie for money received

Camp 89- on a judgement of a Ct having competent jurisdiction which is afterwards reversed -

# Contracts - Resumptio 105

2 Barr. 1005 - Moses vs. W. Farlan This case has given great umbrage to many - But it is a most excellent case. It contains a great deal of Law on this action of Indebitatus assumpsit for money had & rec<sup>d</sup>. It is the case now near its completion. It was this - Moses indorsed some four 30/ notes to W. F. - Moses & M<sup>rs</sup> was to take them at his own risque but Moses indorsed them & took a covenant from M<sup>rs</sup> that he would not come back upon him - Now M<sup>rs</sup> sues these notes one by one before the C<sup>t</sup> of Commons one of the single Just Counts which had jurisdiction over 40/ only. Moses comes in to defend & introduces the covenant which was for £6 - The C<sup>t</sup> were willing to offset this, but they had no jurisdiction over the £6 - Of course M<sup>rs</sup> got his money & then Moses sues him in this action for money had & rec<sup>d</sup> & recovered - He might have sued him on the covenant but the plaintiff was out of the way the action would clearly lie - For you need no resort to an express promise when one party has performed his contract & the other refuses to perform his -

Tr 406 - The party may recover his money back again on the indebitatus assumpsit - he may treat the transaction as tho there was no contract for the other has done the same -

The true principle with regard to judgments has been as I conceive contended with too much nicety - I will endeavor to explain to you the true principle - When once the

## Contracts

Judgement of one lot goes to impeach the judgement of  
 another in this collateral way you never can recover it -  
 The judgement must be attacked by collateral. But when  
 a recovery is had upon the ground of impeaching the former  
 judgement but you recovering money unjustly returned, I  
 do not see why the judgement should make any difference -  
 There is nothing more sacred in a judgement of a court  
 than in any other instrument except this that you shall  
 not attack it collaterally - When a ship is insured, &  
 after being gone a great length of time a sail is instituted  
 ag<sup>t</sup> the underwriters & a recovery obtained afterwards the ship  
 returns, the money can be obtained by indebitatus assumpsit -  
 In this case did the lot attack the judgement? No -  
 You went on the ground that the lot did so directly -  
 But that you may recover when the judgement is not  
 attacked collaterally is unquestionable. It will not do to  
 go so far as to say you may attack the judgement  
directly - If the man could have got this covenant &  
 the lot could have taken cognizance of it & he would  
 take oaths to bring in his covenant & the lot would leave  
 him his covenant & not have sustained the action  
 of indebitatus assumpsit -

H.M. 402 -

# Contracts. *Summary* 107

Here the action is brought on the contract itself for the non performance of the contract. & here it is on the implied promise it is on the ground of no contract at all. & voiding the contract entirely.

The law will then go to the aid of contracts before considered but something new will always be advanced.

Now it is a general rule that where both the parties agree to break a Law of Society & both are equally guilty & one in consequence pays money to the other, he cannot recover it back again. These are cases where they are not equally criminal & the money may be recovered in this action.

But if the contract is illegal & but one party is made criminal, & he that is not criminal pays over money he may recover it back again. The gaming Law places both parties in pari delicto. But suppose the Law don't make but one party criminal, can he that is not made so, recover? Yes. This is the case of the Lottery ticket Insurer. The Law don't forbid paying money to this man, but it inflicts a penalty on the insurer.

for using it. Money then has been paid over to the insurer - It may be recovered back - But has the insurer paid it over according to his promise the tickets having again blanks he could not recover. & here the principle is if both parties are pari delicto one is not in pari delicto the other recovers it as in the case of usury.

These cases you can determine as they arise, & where the Law was made to protect usury & accession, men the both are forbidden so to do

1841 -

Ms. 65

Ms. 66

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## Contracts

2 Lev. 252.  
 10th 92  
 10th 92 -

This is the action promised to be brought to recover penalties for the breach of By Laws & Laws of Corporations - Every man promises to pay the penalty if he breaks the Law. Officers are concerned in this action. This is likewise brought to recover money on an award as the case may be. They award that A pay to B £20. Now this is all there is in the case. There is nothing but the award or what to recover. I have Debt or Book Debt. It will lie. It makes no matter whether there was an express agreement to abide the award or not. If there had been an express award, would have been. This agreement to submit & the award made, lays the foundation for a promise - Can this be taken away when money is awarded? Suppose I enter into a covenant to abide the award, can I then sue in Ass? Why say they, you have a higher remedy, sue on your Covenant. But I receive in this case the lower remedy is not taken away. This is true & this is all - When you have a remedy of a lower nature & this remedy by any subsequent matter between the parties is reduced to a remedy of a higher nature, you are to resort to your remedy of a higher nature. Thus where A takes of B a bond for a Book Debt you cannot sue in an action of Book Debt - It would introduce a great deal of confusion & difficulty were it not so -

But where a party enters into a covenant to

perform a collateral act the action lies as well on the covenant as for the non performance of the contract. The covenant did not grow out of the deed nor was made of it. But suppose the landowner a bond to abide by the award? This is settled principle that you may recover on the bond or on the award - So why may you not when instead of the award it is a covenant -

Rolls 7. I enter into a bond that I will perfect 2000 of R. does not raise a lease & agree in writing that R. will build R. house - Now on failure you may recover on the bond or the agreement for not building the house -

There there is a prior agreement of a Rigger nature you cannot recover upon a subsequent contract of a Rigger nature. Where money has been won at play & the money paid over to the winner - you cannot recover it back again by any form of action -

2 Kent. 14 - Here is a case where the C<sup>t</sup> determined otherwise but it is contradictory to the principle. This case came up just after the case 3 Lev. 118 determined the other way -

In Luttons, 180 there is a report exactly in point that you can't recover it - & this case has been followed ever since - There has been a case decided by Lord Wrenburke where the determination is the same. Wycher case

So in Carth. 338. 5 mod. 13 -

Contracts

In Whitlock the law stands in fact that where money has been laid out for you may recover it back again - This has encouraged Gaming & such, so far that more cases of this kind have been brought than on all other personal Statutes together -

2 Nov. 206. How. } When the consideration has wholly failed as for  
35. ———— } usually - the law -

1 Feb. 22 - as to recovery for the Mistake -

This is the action not for all work & labour done by men in their professions as Lawyers, Physicians & Mechanics &c & otherwise for all services &c - for money earned -

And this is the action upon an imposed contract, yet with respect to this action, as the law once stood in Eng. there could be no enquiry into the items composing it - & this appears to me reasonable - I doubt we never enquire into them - yet they sometimes do - & when they say they can they do not mean that one can go into items as if the parties had not settled their accounts. They mean that one can come into it & put in a charge upon an item & say this is a mistake & one may bring an action for the item in strict law -

As a general rule wherever money has been paid over to an agent, which money ought not to have been paid over & the law has been paid over by the agent without notice to the principal how just you can't recover of the agent -

# Contracts.

Sept 11/11

There are however exceptions to this rule and some when the case is just such as one as I have stated. But if you can find a case where he has been to blame & got the money into his hands paying over & not help him - you may see the point, & he may look to his principal himself.

## Assumpsit upon Sale.

There is a rule with respect to an express warranty - in which the vendor agrees to sell the price of the article in which the vendor has no title & the consideration is given & comes to the buyer, & the vendor may bring an action - or if there are no express warranties in the contract -

But there are a set of cases of a different complexion. The vendor has agreed to sell & the vendee to buy. There is a contract but it is in factum. The vendor has made a deposit after this the finder has title was Page & Jones - that there was some embargo or want as to the title - I would bring him into a deposit. Page & Jones. This objection making the deposit is to bind the bargain. Because I now have the vendor under these circumstances has a right to sue the vendee upon the implied warranty. It is not to make out that the title was embargoed - but there was an express warranty he might sue him on that - But he may so prefer - He may go to the deposit. He is not obliged to go on with the agreement - he may bring his action for money had & received - but he recover no damages - He recover only the deposit - but mark the difference - If the property was



Contracts.2<sup>d</sup> M. E. 10<sup>th</sup> 8-

transferred, it is a rule that if there is fraud you must sue  
him for the fraud - The court rescinds the contract. So long  
then as the property does not vest you may bring suit for the  
debt but if it has vested you must bring your action for the fraud -

1<sup>st</sup> Oct. VIII.50. in 1840. 4. 11  
183. -

Some observations with respect to sales at Auction on  
I saw a man bid the stipulated terms of the auction was to  
purchase. Those terms were that the things sold were free of  
incumbrance. But the auctioneer & there was a small  
incumbrance upon them. They were bid off by the bidder  
refused to pay on the ground of the incumbrance. The auctioneer  
offered to have that in aid the bidder then was a small incumbrance  
on them but the bidder rejected the evidence - for sound reason - the  
stipulated term was binding. If a report then had been given

14. 12. 189.

I would have been recovered in 2<sup>d</sup> - The contract here  
was in piece: & this distinction you must remember when  
you deliver is not delivered so that the property vests altho the  
contract is a good one yet if there is an incumbrance he  
will know at the time you are not bound to perform  
the contract but when <sup>the whole</sup> is changed & vested in the buyer  
the man must stand to his bargain & recover his damages  
for the fraud - only as paid upon the express or implied  
warranty. Thus the contract may be conditional & here

1. 1. R. 183.

the parties must be bound by the contract as they make it -  
You may buy a horse with the liberty of returning him in a month, you may  
return him at the end of this time vacate your contract & receive your money -

# Contracts

Summit 113.

Case 395.

Contract not valid, for selling to bull-dog, cover than owner directed.

Case -

Wesson vs

Johnson.

Now, there is a case of this kind. I sold a pair of horses & warranted them to be four years old only, but they were actually five. This was identically not according to the terms of the contract, but the property had vested in B & he could not get aside the contract but must resort to an action on the warranty.

There is one case of a singular complexion - a man bought a pair of horses on condition to return them at a certain time - He paid 70 Guineas for them. Now He had returned them within the time & rec'd his money he would have put an end to the bargain - He did return them at the time, but he made no demand of the 70 guineas - but said, I will try a second pair - He took them & some after returned them also. He took a third used & returned them, & then brought an action for the money on the ground that the contract was put an end to by the return of the first pair - But the C<sup>t</sup> says the contract was yet open, He took the second pair for the 70 Guineas & is determined that the action did not lie - The only difficulty is, was not the first Contract at an end? - No, this action ought to have been supported. Perhaps however it was not - It is not necessary in these cases to entitle you to your money that you should return the horses, unless there is a condition that they shall first be returned, as where a buyer with liberty to return & they are warranted sound - He may sue on this warranty, without returning the horses.

4. Pl. 1<sup>st</sup> -

It is not necessary to vest the property that actual intermed delivery should be given of it. If there is no impediment in the way of your taking it it amounts to a delivery. But there is a difference between an actual & a legal delivery which takes place immediately upon the property vesting & that is done as soon as the bargain is completed - you may sue him in Trover, or if you have for the money you may recover it in an action of assumpsit.

One thing further - In some cases the vendor is bound to deliver the article, when he agrees to deliver - & even though he has sold, he must deliver it & if he does not altho the vendee has the legal possession before the property is lost he must suffer & not the vendee -

Comp. 296.

The usual mode of closing a contract - If a man sells an article & payment is to be made by a certain day & the other party agrees to it then the property vests - But suppose a case where the payment is to be made over a long time to sell & agree the price is £20. B says, I will give it - Now if nothing more is done it is in the power of either party to settle the contract - For if B sends the £20 the horse vests - & if A sends the horse the bargain is completed - But suppose A agrees to deliver the horse to B in 2 months & B agrees to pay him £20 in 2 mo. Here when the 2 mo. arrive

A question has been made in the course of my reading  
as far as the time of Sec. I. 3 & 148. whether when a  
man makes a bid at an auction, he could recall the bid  
before the hammer is knocked down? It was not then  
determined but is now settled that he may recall the bid  
before the hammer is knocked down - This is exactly con-  
sistent to the principle. Before said down in the case  
they tie it in this way - It is a settled principle that if you don't  
carry away your property you have bid off - the auctioneer may  
sell it again. This is allowed, because the object of all  
vendue sales is to raise money - If the first vendee shall pay  
the difference if it sells for less the second time than it did  
the first - So in this case the action was bro't for the difference



## Contracts

Can the vendee recover it again? In Equity there is a decision of this kind. A contract was entered into to purchase Land. A agreed to sell lands, to B & B agreed to buy them. No conveyance was made, but B gave a deposit with A. afterwards B refuses to carry the purchase into execution & A comes into Chancery to have specific performance of the agreement decreed. B comes in & says every deposit is forfeited if the vendee chases & therefore I may be off. & the Ct refused him to be off. If this court are must of course decide that B could not have recovered the deposit in an action at Law.

18th Nov 745-

A contract to sell in an auction is a contract with all mankind that the highest bidder shall be the proprietor. Of course it is illegal to hire any body to bid under the goods at a certain price. This would be a crime. The auctioneer was told by his employer not to take off under a certain price. But the auctioneer sold to the highest bidder & was sued by the employer, & the Ct determined that no action lay.

Nov 7 395-

Another question has been raised whether an auctioneer may sue in his own name & decides that he may.

# Contracts *Summary 117*

By this it is meant that L. must do it. The action can  
may sue because he has a present probability in the matter.  
1841 81- The law is then upon them for his convenience & need  
not go to the expense in the matter.

There are circumstances & cases of Wagers -  
1841 126  
38- A wager is a contract which is recognized in the Country &  
does not know the action for a wager upon the happening  
or not of a thing of a certain event. In a late decision  
1841 126  
38- it was stated that the Law is now settled that a wager is not  
subject to the principle of the law.

It is an old opinion in law that an action will not lie  
upon a wager - but this has been no decision.

But as the law now recognizes wagers, we must notice  
them - The case is much the same in all cases as to the  
parties - A wager was made between two young gentlemen  
respecting the death of their fathers they lived at a distance  
from home & the day that the wager was paid one of the fathers  
died yet a recovery was had upon the wager on the ground  
that the event was uncertain as to the parties.

Jan 28 33

1841 37- A wager whether the decree of the Court of Chancery would be  
reversed in the House of Lords was held good

A wager to induce an illegal act is void & restrained by the law

## Contracts

Wells of Lascroffs

Case -

As in the case of a blazymen who told a lawyer with an influential character that he should not be seen in Bishop's time when a warrant was to be filled

Chevalier D'or

It has been settled that a lawyer cannot be paid which shall tend to introduce incorrect testimony into the law or wastefully spent with the feelings of their sons

The action on this contract must be an express ass't. There is no In debitoribus left -

An action of ass't is introduced into the law by force of a Statute. In the case of rent reserved upon a parcel of land when there was no Statute of James I. before, Debt was the old action for the sum certain with the only action - but made no odds whether the lease was a parcel or written, but the Statute in this case now allows ass't to be brought & the rule of damages as the terms agreed upon - The origin of this ass't was then this. After the Statute of 28th - was passed there could be no parcel losses finding - of course if rent was reserved on them no action lay upon it for the contract being made was void. This became troublesome & to avoid the real loss lay by the Statute allowing the action of ass't on a parcel lease & the agreement of a habit was to be given & the rule of damages - I mention this because, as the Statute is now, there is no Statute that allows this action to be brought on the ground of a quantum meruit. The man who enjoys the land should be paid for it.

# Exhibit 119.

## Contracts.

But how much is he to pay? The Loper says he doesn't think  
 he would be paid as much as he agreed to pay. I don't see  
 but that the decision should be so. But he should pay so much as  
 is due to him for the service. — He takes a tendency to swell when  
 you leave on a quantum meruit.

A Tortious Holding we are told is not the subject of  
 this action — you cannot sue him as a wrong doer. — But I  
 don't think it was evidence to be left to a jury whether the  
 holding was tortious or not.

On inquiries to real property the Court kept the party  
 to his action founded on the fact — you may declare on  
 your writing if you please, or not give him evidence, when  
 you have declared it to be writing it is not necessary to tell him that you  
 may bring your evidence to prove it. But there is a case where you may introduce  
 parol proof by the nature of the contract & yet not by writing. — How you act to  
 the because you have better proof for the writing.

There has been a case of this kind — An action was tried on a verbal contract  
 They attempted to introduce evidence that this contract was reduced to writing & that  
 — was that this writing was done away & different terms agreed upon — but the Court  
 would not admit it.

I don't think the promise was in writing you must  
 found your action on the written promise — This is a principle  
 but however of the common law principle —

3



## Lect. XXIV.

If a contract of any kind is joint, whether it is a bond or covenant the suit must be brought against all the contracting parties - or the suit may be abated - they can however take an advantage of it except by plea of abatement. If the contract is joint & several, you may sue some one alone or all often but you cannot sue part of them. If when you do sue severally you need not insert in your declaration that they were all bound in the obligation - You may sue as if there were several obligations. It has been made a question whether the declaration would be good if you did ~~not~~ insert all when you sue one but it is settled that it would be good. I think it the best way - For then there would be no difficulty in pleading the judgment in bar - Perhaps the <sup>off</sup> has another note besides the joint & several one of the <sup>off</sup> pieces - Now the obligor comes in to plead this judgment in bar to it - How will the Defend know it except by the former declaration? Therefore it would be better in a suit against one to mention that all were bound jointly & severally -

11th. 76  
2d. 817  
Comm. 823-

I have had occasion to take notice when this action issues - Is not when there is another remedy of a higher nature I will make some further observation on it -

He gives a bond of £100 to B & B promises to pay it. This promise is idle & nugatory for you can sue him on the bond. But it is said often in a new consideration you may sue on the promise -

This requires some explanation - This is the case to which  
 - *Porter v. Loder*, a bond of B & call upon him & says "B  
 you owe me £20 on bond" B says "I don't know that you have a  
 bond of me but show it to me & I will pay you" Now what is  
 the consideration? *Parsons* says the trouble of having the bond -  
 I suppose if there was no other consideration than this you could not  
 recover the sum on the bond - you may on the promise recover  
 damages for the trouble but that may be nominal damages. This  
 is similar to a case where B the obligee in a bond pays to C the  
 obligor, who was a bond to see him, don't see me & this & I will  
 pay you the whole sum in the bond" Could C on this promise  
 recover the whole amount of the bond? C to: he can recover damages  
 on the promise for the forbearance of the suit, & this is the whole  
 extent of the rule -

This doctrine has nothing to do with securing a verbal  
 promise to writing on the principles of the *Common Law* you may  
 sue on the verbal promise & give the written one in evidence -  
 i.e. *whom it may concern*

*Hobbs* 106 - A mere voluntary courtesy never entitles a man to an  
 action; the question then arises - the person who did this had  
 a well grounded prospect of reward, but not of any certain recom-  
 -pense - How often is this the case - Persons living in families  
 rendering services for their depend upon some recompense when  
 they are set off in the world or married - There is no contract &  
 so far it is a voluntary courtesy - They have however always expected to be  
 rewarded, but these cases have all been determined that no recovery can  
 be had - A remarkable case, first time the action was lost but no recovery - *Thompson v. ...*

But the 6<sup>th</sup> will say, hold of any reasonable circumstance that go to show that there was an agreement. It is not necessary that the terms should be stipulated. There is an Equity here all these cases when there has been nothing paid. If there has been a request to them that they should stay, it could not be considered as a voluntary contract.

There is a case put, which I think would be bad at Law. It is in Equity - as where a promise was made to <sup>use</sup> to pay him £100 if he would <sup>use</sup> his influence with C to marry her daughter - This would hardly be a voluntary contract - yet it is corrupt, & therefore like other corrupt contracts - but there is no want of consideration.

Hot<sup>l</sup> - Equity  
vs Law then

After all there is a set of cases on this subject that require attention - If the thing seems in its nature to be a contract - yet if the person was led into it by the opus of the other party, it will be left to a jury, or if it be a request it will not be a contract of the law point is - It will be left to the jury.

Bul. N. D. 153

You will remember one thing further. There are a variety of cases where the person was never requested to do the thing done & yet he recovers - All these cases are under the mercantile Law & therefore totally distinct from the principles of the common Law. Suppose a common porter finds an article on a wharf belonging to a gentleman & takes & carries it to him & the gentleman refuses to pay him. Can he recover on the principles of the com. Law he cannot but on principles of mercantile



Law the Com. to in the case of a common carrier. But the custom & usage of all great towns & depends upon custom & usage - I believe it is unusual and contrary to Law. Of course these cases are not applied to the Com Law principle if so. See Blackstone.

I will now take notice of some illegal contracts. When the consideration is illegal there can be no recovery, or where it leads to an illegal act there can be no recovery -

When two persons are jointly engaged in a contract which is illegal & one party pays the whole, the other is sometimes not obliged to pay the other a money & at other times he is - It all depends upon this - If I undertake to pay the money on the general ground that it would be reasonable & not refuse to pay it I am not obliged to pay - But if I paid it with the party of it in my mind I would be obliged to pay the money.

The knowledge of the Off. that an illegal act was to be made of the thing sold if the sale was legal shall not make him a sufferer. as where a French subject sells a quantity of tea to B an English subject - & I know that this were to be smuggled into England & so continues that they should be smuggled - B refuses to pay upon it, saying here in England on the ground that the contract was illegal. But the law says he shall recover - he has nothing to do with the English Law.

But if this had both been English subjects there could have been no recovery.

P. B. 48.

Comp. 34.

P. B. 466.

Co. 454.



Those contracts founded on illegal contracts are void  
 & bonds of indemnity to induce illegal acts are void -  
 There is however the distinction if a man does an  
 illegal act ignorantly & in good faith not knowing at the time  
 that it was an illegal act - also had no reason to think it  
 was so the bond of indemnity is good - as where a Sheriff brings  
 B. a tavern keeper & shows him a warrant from a Justice  
 & requests the tavern keeper to keep B. & give a bond of indemnity -  
 if this warrant was forged - the indemnity is good -

Section 57.

Sec. 10

Sec. 42.

If a man promise to pay if a wife do what he ought to  
 do without this promise is void - there can be no recovery  
 upon it, & if anything is taken it is extortion

The Eng. & Am. law as it respects the right of recovery  
 extended this action to unconscionable demands as far as they  
 have done. They always proceed on the ground of its being unconscionable.

A. came to B. to borrow money to buy goods - A. lent it to  
 him on these terms - a note or demand & one half of the profits of  
 the goods - as soon as A. gets his note he rec. B. & recovers - then  
 was to have one half of the profits also - It was a question whether  
 this was not money. But it could not be - there was no interest rec'd.

Comp. 42-

It was in fact a partnership - now he cannot recover one  
 half of the profits according to the bargain - & the  
 Court say - you shall not recover - it was an  
 unconscionable bargain -

Trivoltous considerations lay no foundation for an action. What they are may be difficult to understand. The best case is this - When a man promises to do a thing he must take care to see that he can perform it before he makes his promise.

2 Feb 1883 477 For if in the case on an express bond it would be so with Indebtedness it be a bond then it is a bond for money -  
Then 2 Feb 1883 478 can any one sue on the promise - either a bond or a promise to deliver a thing for no benefit -

2 Feb 1883 479

The following section says a person may make a bond a negotiable instrument - a given to B a bond - at the time he endorses it he endorses on the back of it a promise to pay it to any assignee of B - This is a promise - it is the promise in favor of C the assignee. In this way you may make any bond negotiable -

You will remember that in the action for money had &c. you may recover where the person ought not in good conscience to retain - There is one exception to this - The case is where you shall not be held without trying a question of right which cannot be tried in A.C. - as where A took up the cattle of B & denies assent on the land - B demands a right of common in it - a case he had come. B says the damage charge his action against A for money had &c. - can he recover? - No - you cannot try on right of common in A.C. - you should have brought a writ of Trespass in fact - or Trespass





128 / 2  
Essex, when writing it

# Contracts

The following case was decided by the S.C.U. & H. H. Allen  
a Decedent is Robert Jones Allen. He had a large estate in that  
State. He had an only daughter. She conveyed some of his lands to  
his brother. He Allen is best for his daughter & took a bond from  
him in £50,000 that he should have this land conveyed to her when  
she came of age or when married. A minor child appointed her  
her executor. He was the origin in the bond. Now the bond by some  
means or other came into the daughter's hands. There was no one  
to pay this bond but she the executor was the obligor. How was  
she to do? Her first thought was to bring a petition in Chancery  
and that would be done before the court could be obtained  
as a decree in equity that they might be paid. He finally agreed  
to bring this action against the executor & Judge Chase sustained it.  
You said he would give no opinion on it, so that we might  
have time to file a petition in Equity the Lord being paid under  
attachment. As the same was adjourned - & I said we paid  
a final sum paid on the merits & Judge Chase decided  
that the action would lie. This decision does not hang from  
the decision in Kent. one Lord is paid & appointed. I  
do not know why this decision may not be followed.

con, 566

There is a case in Chancery respecting the executor's  
to be paid in full so that a full recovery of the  
agent but must wait to the principal. I see the O'Connell  
that of course only had been given on the basis of the  
agent & the money had no authority. Can I ever have  
would so that the action in equity might be struck out  
I am action brought against the agent.

# Contracts - Feb 19 - 129

But if a new contract had been given on the strength of the previous one it is not like the first & the second form the action is admissible -

A few exceptions respecting a change being made when action may be brought -

Plaintiff always binds the employee as far as the employer goes then authority. This is to be determined from the nature of the business. If they exceed the authority given by the master the master is not bound -

The Plaintiff in all these cases is not bound by the evidence unless he shows himself to be a person of sound mind & of sound memory & of sound judgment & of sound character. They employ a lawyer - the lawyer would say things & would tell him how to do - the lawyer informed him he was in the employ of the Commissioners & would say him - the question was whether the person bound himself particularly? & the V said he. It was no more than if he had signed a writing promising to pay as agent to the Commissioners -

There is one case in which the decision is considered. It is that of the Corporation of London who contracted for stone on account of the British Government - when it was found that the stone was not of the quality & the price was not the same -

There is another case which appears to be stronger - A Barrister & son of the British Government - when it was found that the stone was not of the quality & the price was not the same -

Feb 20

Feb 21

Feb 22

Feb 23

# Contracts

As to what binds the attempt - always when he is acting  
in pursuit of the great object, which is the nature of the  
business which he is engaged in. He should be bound to  
try to destroy the evidence of the employment. Therefore  
that you may be careful to take evidence of the  
contract, which you can always produce.

If your servant takes up goods upon credit  
& you pay, you are bound if the affiant takes up  
1200. on credit. If you have always dealt with money  
you are not bound to take upon credit.

Partners in Trade. As to the question when an action  
may be brought agt partners, there must be a partnership  
to constitute a partnership there must be either an  
agreement to share in the loss & profits or when joint  
property is sold, it must amount to such an agreement.  
If the deft has suffered another to hold out his name  
& his credit, whether he is partner or not he shall be  
so considered. He is a dormant partner. He procures  
2 H. R. 998. a credit to the partner as far as his name goes. Leaving  
the last case out of the question the partner  
must have his reward out of the profits -

It may be seen then there is a number of Partners & it is a rule that all must sue - The exception to this is two cases decided by the whole Ct & established a principle which must now be considered as Law -

"Where there has been such a severance by transactions between the parties that there is no ground of claim in favour of all but only of one then one may sue -"

The first case was where three timber merchants got Jt to sell their timber - He paid 7s each to two of them & B the third brought his action agt him in his own name - It was contended he could not sue without joining the others - The Ct however decided that all the circumstances appearing in the declaration, he should recover. The second case was this. There were six proprietors of a house - equal owners - The house was rented for 5000 & the Tenant paid 5 their proportion - the 6th owner wanting his money, sued for it & the action was sustained - For altho the contract was agt one & all must sue generally, yet it was unnecessary in the present case - I know of no other exceptions to this rule -

Partners where one is deceased. Now in all cases where a partner dies when it is such a property in common, as is the case in all mercantile transactions the right



of the deceased bank is in the right of the bank goes  
to his wife as to the right of being charged it goes to the  
bank. If you could see all of the various cases you  
are the best. The right of the bank goes to the bank.

144. R. 645-947. If a bank is a bank, it must be able to stand  
it may be placed in a bank.

As to the permission what manner of a bank account  
may be discharged so as to avoid no payment of action.

The rule is that if there is a bank agreement & before  
it is carried into execution, before a bank it may be  
discharged by a bank. But after a bank a bank discharge  
without consideration is not sufficient. A bank discharge  
is not sufficient & is given up without consideration which  
cannot be done. The bank consideration would be sufficient.

There is such a thing as a discharge of a promise by  
another promise inconsistent with the former one. as  
a bank to make a bank that he would money to him  
3 months. Afterward he promised to make money to him  
the former is discharged. And if it had been 2 months  
in the former would not have been discharged.  
You right to see in any promise or agreement, never  
more until you do the thing you agreed to do if this was to be  
done first. So you agree you are to do something at the  
same time. So is to do something else. You must do yours. But if  
is sufficient from the face of the contract that you are entitled to something  
before you do yours and you may then see before you do your part.

Bro. Lee 620  
Co. Lee 384  
2 mod. 46  
- 257.



between the actual soundness. damages, & if you plead  
tender in this case, the plea is admissible.

This is a contract which in the ordinary nature  
things the idea of tender. At the time there is a debt or engagement  
because it is necessary he should be first repaid. So far then  
as it respects a sum of money due tender is good, but  
where it respects a sum of money a danger tender is of  
no avail. & there being a precedent debt or duty, is of no  
consequence. It is not necessary that the contract should

specify the sum to be paid. A certain oil good certain  
certain butter. Market price is a well known that

It. 576

a tender may be good on a quantity or weight as  
where it takes up good oil to store without making  
any engagement as to the price, he may tender in the case.  
One may tender for labour or hire it may be measured  
by some standard you may plead tender. How if there be  
no standard to be found.

Tender is an offer to pay. Debt or perform  
a duty. When a man makes tender it seems he must  
declare on what account he makes the tender. However  
there are cases in which this rule has been relaxed. The origin  
of the rule was that a man might owe on several distinct charges.  
If a man owe one but one debt & the tender was in all  
other respects good & he say I have brought you £100 to pay the Debt



# Contracts — 135

Exch. 70.

I am your true tale & this has been determined to be a good tender. It must be an offer to pay & the cases will explain what is an offer. It comes to this, I have thought you your money & here I am ready to pay it for that note. This has been determined not to be a good tender. The next offer is that is say "Here is your money" It is true a tender in bags will do you need not take out your money & count it. He has counted it himself one of the cases was of this kind he used money, had his lands mortgaged. He tendered the money in bags. This was not good because he kept the bag under his arm. He only said "with you would take your money" but the man took it, it is nothing.

Exch. 11. C. C. 68.

2d  
Dev. 104.

Exch. 114-

A question has been made in the Eng. & Am. money late report whether the man need have tendered a sum the other says "Go of course have nothing to do with it. It is clear that if he comes to make a tender & the man refuses, he may make no tender. He may be in the worst case. The case don't appear to be decided, but from analogy we should say perhaps it is not necessary. It may be however on some grounds — see 4 Exch. 11. C. C. 68.

With respect to Branch 1 other stock & he has tendered that an offer to transfer stock at the time agreed upon is good — an actual transfer on the books is not necessary. If he offers to do it, he can never be said, because he has not done it —



Jan 27/71

There is a case in *Thompson*, in which a tender was  
actually made, but it was refused by the other party -  
§ 200 CSC - but that is the tender of a specific sum -

Cf. also - *Thompson* - money - the tender of money  
to buy land - how you make it clear the money is being offered  
to buy land - and it is to what value the plaintiff of the other  
party the money is not taken as a tender -

There is a question whether the man must not  
tender the precise sum - If the tender is not a tender  
not tender - If a man is not obliged to receive the money  
in hand - If it is accepted it is a partial payment -

¶ 206 - If he pays more it is now settled to be a good tender -  
a tender of more is certainly a tender of the debt -

Contracts are sometimes made in which a man is at  
liberty to pay in certain articles or in money. He has  
a right to tender those articles at that time or the money -  
If the contract is that he will pay in articles or in money  
at the election of the obligee, you must go for him at  
all events - you may however if you can get the election  
of the obligee before that time, tender the one chosen -

But for money is to be paid the question then arises  
what money is a tender? The rule is made by the  
Law of the Land - of course it may be the current medium

As to Copper coin, the Law has not its completion from the advertisement of 6<sup>th</sup> Dec a little while that Copper coin cannot be tendered except to make change. This must necessarily be a small sum.

A question has been made & becomes an important one in the U.S. whether a medium which depreciates after the tender may be tendered again equal to the sum first tendered. You will remember the man who makes the Tender must keep the money & bring it into C<sup>t</sup>. It is said it need not be the same money if it is money which may be tendered. There was a decision in Ireland that the Tender was good on principle we should say the same. It is making the loss fall on the man who was to blame for not receiving it.

It is said in Boke's Repts that if money is tendered but if it is counterfeit at the time the man has no remedy. So far is true that if A tender B a sum of money both being equally ignorant of the counterfeit & B accepts it it is a discharge of the obligation. But that A should be obliged to pay B the sum if this counterfeit money is put for a pair the furnisher of the bank. He has a right to recover the sum from whoever issues them.

With respect to Bank notes being a tender in the U.S. They never can be considered as a Tender there.

Being so many & credit given to B for

4<sup>th</sup> Long tender of Bank notes thought good if not objected to at the time

Jan 15-

v. Little 218.

bo. 15-

T.R. 554

Pos. & P. 526

rest.

In Equity the Plaintiff may consider Bank notes as a tender if there are no objections to the amount or that account it should be considered. The same point came up in a case, but as no decision was given the opinion of the Plaintiff is that those of the same kind.

As to articles which are to be tendered. As it respects the quality, it must be merchantable unless otherwise agreed upon by the parties.

As to the effect of Tender. In some cases it is said to discharge the Debt or duty. In others it does not - but discharges the damages & the Debt remains. In all cases where a Lien is created there is no doubt but that it discharges the Lien - as in the case of a mortgage for £100. Tender of the discharge the Land - whenever it is a tender of articles, not money the tender discharges the Debt or duty - and if a tender of cattle, he may tender them & need not take any care of them - This is not to small articles. They are in the same situation as money. The tender of the articles vests them in the man to whom tendered. So that the tenderer need take no care of them. He may do it & if he refuses to deliver them Tender will lie.

The rule as laid down leads into error as it respects money - It says the Debt or duty remains - True a duty remains but it is a different one. The Law makes the Tenderer Bailor to

Co. 79-  
Co. Lit. 207.

# Contracts - Tendor 189.

The owner of the money & assets the property as existing in the Tendor - & you cannot recover on the note, if the Tendor does his duty -

On principles of Equity the former Debt must be discharged. The Tendor keeps the money and his house is burned down & the money is destroyed. He ought to suffer - Clearly the Tendor, for he is the owner of the money & the Tendor is only the Bailor - The duty then which remains is to keep the money with ordinary care - & that is the meaning of the rule laid down - The case in Davis casts light upon this subject. When the man Tended the last time the depreciating medium, if he had continued to owe the Debt, his word <sup>not</sup> I am answered - If he had the money only as Bailor why then this decision is reconcilable. But it is asked does he not sue on the note? yes but he don't recover on it. He never got his case if the Tendor has done his duty, for when the money is put into his judgment is given for the Debt. Now then if he can recover of the Bailor in an action of account. But is there any such action? No I say if you recover your money you shall come with your note & that is need, & thus of as the man if the Debt remains undischarged & the money don't vest - if it is destroyed by inevitable accident, the Tendor is the man who has done his duty must suffer. It does not vest the Tendor who has not done his duty must suffer. There has been & still may be a question that may arise under the Corp. Treaty - I will take notice of it in the next & last Lecture -



Lect. XXVII. It is a governing principle in the Law of Tender, that a debtor cannot receive money, because the same advantage as if he had paid it. They have been very cautious of it - He must tender the money to the Creditor of the Tender. There is to be no ordinary care & diligence. - On this ground it is bound to pay the money when called for; it is unjust if any loss should happen to the money that the loss should fall upon the Tenderer which would be the case unless he is considered a Debtor - on this principle the case of the depreciation medium can be reconciled.

There was a provision in the Treaty of 1783 that no debts should be impaired but that they should be paid - The object was to secure the creditors - upon this a great question arose - Many of the States passed Laws to prevent the collection of these Debts in the very face of the Treaty - This was like to produce a rupture at length Congress as they had no power over the States who were separate & distinct advised the States to repeal these Laws & they did so generally - the question then arose whether Connecticut had such a Law - It is denied that she had, & of course had

# Contracts

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From a legal - The Law in Gen<sup>l</sup> was the following  
The notes & papers in the Act to take up all the notes  
bonds & papers previous to the war which were issued  
& founded in contract & particular were according to the  
rule of Equity between the parties. Here then the question  
arose - the Republic came with their notes Bonds & claimed  
payment according to the terms of the Treaty which were  
that they should be paid. This was the state of the parties -  
one of them had paid & the British bonds, the other remained  
within the American times - This made a tender while the  
party was with the British & the question was whether this  
should be a discharge or, payment & what was due - What  
was due? The sum due at the time of the tender, or at  
the time of the Re-peciation? The 6<sup>th</sup> & 7<sup>th</sup> recommended a con-  
struction of this Act. That the sum tendered should be the sum to be paid  
considering the Lenders as Bachel of the money. This Law & the  
construction of it was complained of as a violation of the Treaty, & to get rid  
of it they passed a Law retroacting to the very time in the Statute  
Book contrary to the Treaty. After this no question came up  
before the Ct - This will show that the Law ought to take upon  
the Tendency. There was a Law & a re-peciation by which  
a Law was enacted & the Government upon which had been promised  
that the Law should take upon them who ought to have received  
the money -

## Contracts

In the case of a Mortgage the Lender retains the lien. The Debt & Duty still remain, so far as that to Litt. 20% the man is Bailee of the money. When there is a gratuitous mortgage the Debt & Duty remain —

You will recollect that whenever a man makes a Lender he may lose all the benefit of it & even become a Debtor himself. I refuse to deliver the money when called for — you must do all his duties — There is one thing that does not exactly comport with the idea, & that is the effect of the demand — the demand must be a reasonable one —

11 Novels 7/- I ought to be made at his house for it is supposed that  
28 Nov 87k- the money is in his drawer —

In case of Mortgage he must make oath in an adjournment in Equity that he has done nothing with the money, or he will have to account for the use or Int —

For the consideration passes to the Lender there can be no difficulty, the Lender shall have all the benefit of having paid — as in case of a Lease — because the Lender is the Bailee of the money —  
Nov. 88 7/-

If the remedy is complete & effectual at Equity there can be no difficulty — as where one was to transfer stock on a certain day for £1000 — The man was ready to transfer at the place & on the day — & then sued for the money & the £1000 recover — for you have your remedy in Equity — But there are cases of this kind — viz

# Contracts - Tender

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A is under an obligation to build B a house at a certain time & B promises to pay \$2000. A may tender & recover & Equity will oblige him to build. Suppose B to commence by the first of May & finish it by the first of November - now on the principle laid down if he tenders he services & B

leaves him away he can recover the whole \$2000 - is not controlled by the fact of delay - I should think he would be entitled to damages commensurate with his injury. In *Carson v. Lewis* 22 *P. & F.* 1000. the principle - we indemnify the man in such a case & let - finally, according to the injury sustained

The absence of the party, so that no tender can be made, renders a tender unnecessary. However complete proof that he was ready to tender must be produced other than the tenderer's statement of his own readiness, in a tender made by him in court - in the U.S. means being out of the limits of the U.S.

What will constitute a tender?

Where no place is fixed & I promise to pay \$100. I must in the first the tender must be made to the person - That is nearly the question - That is the case in a case like this. I was in *Smith v. Jones* 10 *Q. B.* 1000. the tender is to be made & when he gets there he finds the person is gone & returns - must he follow him back - The rule would mean that you should always tender to the person for in the case you have to find out the place where the person is supposed to be -



And I think, moved to Georgia you could not make  
your tender - I thought. You are subject to his commands - &  
there is a command so that you can't get at him far if he  
was on his way to Georgia you are excused. You must tender  
at his house where he is supposed to be if there is no place of  
residence & is decided in the 11th Ct. Of course you must  
tender at the place where he lives if he is within the Government  
I have now been speaking of money. I thought I have  
not let in his own town he might have tendered it then  
they had to give him then I could have tendered he could not  
have come to tender to them - This is according to the rule  
that the Law of Tender is the Law of Reason. If the time  
then has come you may tender the money wherever  
you must run -

There is a proposition laid down in the elementary  
writers it comes from a particular authority which I don't  
know much - It is with respect to mortgages - I don't find  
that the case supports the opinion - I think if the mortgagor  
could go & notify the mortgagee to get some convenient place  
& receive his money he must go there - Upon examination  
the authorities don't support the opinion - It was determined on  
its own particular circumstances - I was so prejudiced with  
in exactly the same case - A man living in Oxford Street the  
greater part of his time in London - The mortgagor went

to him while in London - There was a great sum of money & the tender was in specie - The money was payable at any time - He goes to him & notifies him that he will pay him the money at Lincoln's Inn Fields - The witnesses made no objection - The man went & made the tender - The other's attorney made no tender, & finally - The case went on the ground that the man was in London & made no objection to receiving it - The other was put off till the next & the 1<sup>st</sup> said the tender was a good one - The transaction was considered as an agreement to receive & then - In Eng. there is one exception to this rule -

Litt. 210.

Tenants are not obliged to go to the Landlord to pay their rents - They may tender on the Land - I question whether this exception would be here made in favour of Tenant's Lien of Tenure - However the view of the law upon it stands upon a different ground as to whether the place of delivery must always be fixed - that if no place is fixed the legal construction is that it shall be wherever at his dwelling house - But this is not observed to follow him if he removes unless the removal is no detriment to him otherwise - The whole is a rule of Equity - Where there is a removal it is in the power of the promisee to compel him to deliver them at any place provided it will be no greater detriment to him than to deliver them when the promisee first lives -

Assignment of a Chose I give to John Haron a Chose  
 of £50 - I ask it to Haron being in Middlebury Vermont  
 Now where is it to tender? as Middlebury? If I don't then  
 is a difficulty - The Law protects these assignments - It  
 may be a Bankrupt & I R may say "take you know I  
 own a this money & Miles is a Bankrupt why did you  
 tender to him?" Well what is to be done? Why preserve the  
 right? Both parties - Go to Haron & don't tender to that  
 you are not obliged to go to Middlebury, but you must  
 not tender it to the assignor - The principle is you are  
 not to throw a greater trouble on the tenderer by the assignment  
 than was on him before -

Case 34.

Case 264.

By the Court. Now you can't tender after the commencement  
 of a suit on account of the Costs - In Equity you can, for the  
 Costs are considered as certain as the debt or duty. But at  
 Law you may stop the suit, by bringing the money into  
 Court to pay the Debt & Costs - In most of the States we have  
 adopted the rule, by forcing after suit is commenced

Case 265.

I will now consider the place as fixed: & the time is  
 made certain by being to be paid "payable at Michaelmas day  
 or one month after" It would seem that he might tender  
 at Michaelmas day. & so he might. He found the man at home  
 but not without because the man did not know that he would  
 come to make the tender good then & must tender on the next day.  
 The man was not at home -



# Contracts - Tender 141

560. 14

Payment is to be made on or before such a day  
the same principles govern -

560. 172

560. 174

It must not only be on the last day but on the  
utmost convenient part of that day, unless you give the man  
some time see that day - when a day is the utmost convenient part.  
If it is money it must be tendered so that it may be counted by day  
light, so that the man may not be obliged to light a candle -  
If it is wheat to deliver 1000 yds of cloth. It must be so  
tendered that you can measure it at day light.  
Of course this varies with the nature of the thing to be tendered.

560. 202

Sometimes the business is of such a nature that it  
must be made in the utmost convenient part of the day -

560. 244

You must go within the hours of the business - as  
his custom - as office hours where a tender is to be made so and

If the place is certain & no time be fixed, he owes it  
on demand - but the man don't know when he will come -  
on demand means nothing - Can he tender it at any time?

560. 271

The rule is the promisee must give notice, & that will be  
the time if there is no reasonable objection

560. 312

One obligation where a tender was made was of his kind.  
He was to have all his life to pay the obligation. The question  
was whether it was a good reason if he did not pay, for no  
notice was given which was necessary -

560. 355

If the party insists at the place that the party, tho no  
time is fixed, a tender at that time is good -



Lut XXVIII.

When I am Opposed to good the Law only  
the most proper property, and a tender may not always be made  
to the Law the most proper property, for if it gives an obli-  
gation to pay B so much money for the use of C, tho C has  
the capital, still yet the tender must be to B, because the  
contract was made with him, not with C, yet person to receive the money.  
but C may say, If the tender had been to B upon condition to pay C so  
much a tender to C is good.

If tendering a tender.

To make a tender good it seems you must state the  
time in which you tendered so that it may be known  
it was on the day on which it may be made & this day  
either previous must be on the last day - I must also ad-  
vise the place that it was made on the utmost convenient  
part of the day - You need not fix the hour. For the Law  
does not require this - If you are not in the place & the person  
is not there to receive it the time being past you need  
not place that you tendered it but that you were there  
& was ready to tender & that he was ready to receive it.

1 Dec. 13. 2 Dec. 23. This will make your plea good - You must then  
2 Feb. 23. 2 June. a refusal to accept on the part of the Defendant.  
252. Civ. Oblig. unless you make out that he was absent -  
388. 23. 2 68.

If the tender is of such a nature that all kind of duty  
is discharged (as in the Law) you need only give a tender at the

# Contracts <sup>149.</sup> Tender (2)

Co. Lib. 207. ultimate convenience ~~part~~ of the day - this is not in all  
Co. 79 - Cases where the duty is discharged by the Tender -

If all duty is not discharged, you must go further you  
must prove that you tendered - that you are still willing & ready  
Thos. 129. to tender that you do actually tender the money in <sup>it</sup> - This  
is sufficient - you may do in order to discharge yourself -

Sack 623 - Still if this Tender duty arose at the time of the contract  
it seems you must add that you "always have been ready" -  
I should say that this was not traversable - However - from  
that time & ready in good faith  
12. -

10 mod. 81 - That the Plff replies that he made a demand & the Defd -  
P. B. 254. refused - you strike up the tender at once - If you don't have  
your money in <sup>it</sup> & your agreement is traversed that you have  
it in <sup>it</sup> you have lost the benefit of your tender -

as to traversing articles - I don't see why you can't bring  
some into <sup>it</sup> as well as money - To be sure all - them can't be  
brought - I should <sup>think</sup> that those which can be brought without inconvenience  
& inconvenience ought to be - However I know of no authority -  
Each <sup>of</sup> may have such a rule - It is <sup>in</sup> traversing articles -  
occurs / the great inconvenience need not be brought in -  
Under a rule of <sup>it</sup> they may be -

The thing but in <sup>it</sup> - as to the Plff the tender is paid  
against him - The imp. in some of the State Tenders is allowed  
& the same is uncertain as in the case of duties of the <sup>of</sup> <sup>the</sup>  
at least I am sure there is no such thing -

Co. Lib. 102 -  
Sack 53 -

## Accord with Satisfaction

There is a very narrow boundary for the time being  
 It reaches into bilateral actions for torts universally -  
 It reaches all contracts excepting a single class by force  
 of the Com. Law & Com. by that it reaches this class etc -  
 Is that true it reaches all contracts. - Accord & satisfaction  
 means a taking of with something for an injury & release  
 receiving it - Accord is the agreement & satisfaction the receipt.

This sort reach contracts where the Debt grows  
 by the specialty - he enters into a contract with B to pay  
 him so much years of his rent lands for a house in  
 6 months - The rent grows by the Debt - but if A  
 enters into a bond to B for so much money not depending  
 upon a subsequent event then the Debt grows out of the  
 specialty & accord & satisfaction is not a good plea - This  
 originated in a maxim - First accord & satisfaction cannot  
 destroy a specialty & if it were under hand & seal you could  
 plead it - you must destroy the specialty with as high  
 an instrument as the specialty itself - If it was under hand  
 & seal it would be called a release -

Under the Com. Stat. a man may plead payment to a  
 Bond - In this case if it were to be pleaded that "it was agreed  
 & agreed to receive the sum specified in the condition it would  
 be no greater infringement of the maxim than that under

# Contracts - Accord & Satisf. 151

Bo. 38. 6 So. 44  
Lan. 100. 100

this Court. you can force payment to a Party without it being in writing - this point has been agitated but not settled

There is no place in a real action - it is confined to legal actions - In the form it can give no title - But can be used by the Law of the Land only by deed It may be a good foundation for a Bill - Equity to compel a conveyance -

The accord must have certain qualities to make it good. It must be a bargain - but in this agreement must really have some consideration - but in Law would be a good one. Which would be the foundation of an action. It must be some security (advantage or disadvantage) The thing done must be the same thing.

Suppose A brings an action against B for taking his cattle - A pleads accord & that it was agreed that the business should be settled & that it should have his cattle again - Here is no consideration at all - But had there any consideration it would have been a good one - If it was a "real" would have been no good but I don't understand this - it may relate to cotton & chain!

Moll 128 -  
Lan. 100 32 -

The satisfaction must be said to be worth something yet there is no case in which it has been held to be no place but there has been some doubt - but that whether the Judicial Party is not considered any thing - taking Engineers would do

Roll 128 -

Again: It is said down this must be a full satisfaction This means, it ought never to appear to the Court for the sake of the record conclusively not to be a full satisfaction - Every collateral article may be placed in Box to any Party

Lan. 44b -  
Cov. 143 -  
460. 79 -



J. W. 86-

It seems here the witness must be furnished when a consideration  
 given unless it cannot not appear on the record that of some value  
 that in the case of the law 'not' no value may not be given  
 in satisfaction. Many things are of great value in Equity  
 which are not so at Law. There is a maxim in the law.

W. 125-

- mod. 5-

The Court have adopted the rule that you may give  
 in evidence anything of accused satisfaction which is of  
 value either in Law or Equity.

Roh 929-

1 mod 69-

v. 70, 78

One other quality. His voice is must be declared  
 in contract unless into or condition to work 2 or 3 days.  
 This was uncertain altho he avowed that he worked 3 days  
 one thing further. This agreement must be executed  
 then not meant by this that you may not take a new  
 agreement. The Court agree upon to be some must be some

Natural promises may be given

66. 98

W. 573-

As to Reading - the old Eng. made was given to a  
 new one. The key to the old one which is that the P<sup>th</sup> Def<sup>er</sup>  
 agreed to give & take such a sum. That the Def<sup>er</sup> gave & the P<sup>th</sup>  
 accepted. Now the same nothing to do with accord. The  
 Def<sup>er</sup> says the P<sup>th</sup> ought to be paid & because he gave him  
 on such a day or certain sum & the P<sup>th</sup> accepted it as a  
 satisfaction. This is made of 1/2 pounds in 100  
 universal in Eng.

## Sect. XXX.

## Minority or Infancy

This is a defence as ag<sup>t</sup> contracts. It has however been treated under the title of Parent & Child. But as it is a defence, I will call it up to your view.

This is a defence ag<sup>t</sup> all contracts prima facie. But it is no defence ag<sup>t</sup> torts, except where the tort is of such a nature that it cannot be committed unless by a person sole capac as in Parsons for instance. A tort cannot be committed without malice. One of the Infants & Young says the plea is conclusive. If over this, the J<sup>y</sup> may rel<sup>y</sup> that it is within the age of discretion & the Deft. wins it. In fact will be left to the J<sup>y</sup> to determine. In Thompson & Infancy is no defence.

As to franchise in a contract, the old authorities are all ag<sup>t</sup> a minor being liable for this. The modern Judges show great disgust with these decisions. I did hear that Lanc came to be so established. I find it difficult to conceive. I believe if the case were to come up now in Eng. directly he would say the minor is liable for, and if he is sole capac. The old authorities admit that he may be indictable for fraud. Why may he not then be prosecuted in a civil action for the very same thing? I have only to observe that the two Justices Barker & Pepper dissent from these decisions. Adams & Field says the privilege of infancy was given as a shield to

of defense, not as an offensive weapon. It is a Barke to  
 save the liable for fraud in a contract or for fraud in  
 procuring a contract.

I agreed that Infancy is prima facie a good defense  
 of all contracts. no reply can be made to this except in two  
 cases - I. It may be answered that it was for necessities  
 & II. That when the Defat. none of full age. It is assumed to pass.

In an action of assumpsit. Infancy may be pleaded in Bar  
 or given in evidence under the genl issue.

It is in the elementary writer that you can give it in  
 evidence under the general issue, because all contracts  
 of Infants are absolutely void. This is not true. For  
 you may give in evidence under non ass<sup>t</sup> any thing that  
 shows that the P<sup>ty</sup> ought <sup>not</sup> to recover.

In the plea of Infancy, the P<sup>ty</sup> replies non necessaries  
 This sets up the P<sup>ty</sup> case again. What then shall the Defat.  
 do? He can't deny, because if they were necessities. He  
 would be bound. He can only traverse the necessities.  
 This is on an ass<sup>t</sup>. When you plead necessities, you need  
 not plead all the circumstances that show the wisdom of  
 of the Defat. The necessities must not only be such as are true  
 such in Law. But they must be necessary for the minor in his  
 particular circumstances. He must have been out of the

protecting Parents of a Parent, guardian or Master, unless the care of them is unduly exercised - as where the Inf. is turned out of doors - and here of course is a privilege to be left to the Jury - this is a question of Law mixed with a question of Fact.

If an action is brought on a Bond & the Defal. pleads Infancy - the Off can't reply over, necessaries - He may perhaps dispute on the original Contract, but not on the Bond - because you can't enquire into the consideration of it - consequently if you could recover on the Bond, the whole privilege of Infancy in this respect is destroyed - which is that he shall be bound only for necessaries - & it would be as a negotiable note & indeed any instrument that you can't enquire its consideration. The real ground of an Inf. liability is a privilege to the Inf. to be bound by a quantum valebant - If you merely reply over to a plea of Infancy, to subsequent promise to pay, which sets up the original contract. If the contract was originally void you must sue on the subsequent promise - He may treat it so, if he wishes by it to get advantage of his Infancy - But if he can have the benefit without, it is only voidable - There is no case where the action is brought on the subsequent promise -



Def. Limitations  
 vide 1 Felt. N. B. 120.

Divers

This is another defence, but has been considered by the Court. I shall here make but a few observations on it. It may be given in evidence under the general issue of non assumpsit. It must be pleaded specially to a bond.

In your plea of Divers to a bond you must set out what the Divers was, that the Ct. may know whether it is Divers or not - to a declaration can be given to this plea except ~~what~~ a denial of it; unless the facts stated in the plea do not amount to Divers then you may answer to it.

Illegality in a Contract.

This has already been considered. This is not like all other defences upon assumpsit as the case may be, for when you sue upon an illegal contract, you must state just what the contract was. & when stated it is of course actionable for the illegal upon the face of it. Still illegality may be proved where it does not appear upon the face of the declaration, as in the case of a note of hand, or a bond which is a security for an illegal contract & here you may plead the illegality. If the bond has a condition & it is illegal, you may pray over of the condition, spread it upon the record & demur to the declaration. This is a good way of pleading the ground out of use. You must plead what the illegality was, & there can be no answer except a denial of

# Contracts Release 157

The defense of Stat of Limitations & Est. off. is omitted in these lectures for the  
Law in the subject case 1 belongs to Civil Trials 120 & 222 & 230 note of 1999

## Judgements

There is also many cases a B. is an action in the rule  
2 Bb. R. 779 If you must use the same evidence in your own action  
827. That you did in your other, you are bound by the former  
3 Wils. 240. Judgment. It is conclusive in all cases there is no  
304 exception to it. You must aver that no has brought an  
action no ways diverse from the other

## Release

There is one species technically called a discharge which  
is different from a release - The former is when the  
court agrees to deliver B. 10 Bushels of wheat within a week. Before  
the week ends as the wheat declines & wishes to be off & B. agrees  
to it - This is a discharge - Kind of the week has elapsed & a  
right of action accrued, then merely the discharge words  
as a kind of release - a 1000 per cent or  
20 - There must be a consideration. & then it may be  
pleaded in way of account. This release according to the  
principles of the Com Law must be under hand & seal -  
1 Pict. 177-243 The reason is because the throwing up without a considera-  
Luo. Jac. 620. tion, is a nudum pactum a right of action having  
Luo. Car. 304 accrued. A release with a seal imports some considera-  
Co. Litt. 212b. tion - & therefore there is a conversion - 5 Bask. 232 2.  
1 Mod. 285. - ration - & therefore there is a conversion - 5 Bask. 232 2.  
2 do. 44. - ration - & therefore there is a conversion - 5 Bask. 232 2.

I don't we don't put on a seal - but we view  
it as a sealed instrument

## Contracts

This release in the case may be, may be the broadest  
 defence in the world - for it may go far & be against  
 all demands & the only question remaining is, what  
 is a demand? This we will return to.

A question has been made, whether if it gives a Bond  
 to B to be p<sup>d</sup> within a year & before the year he releases  
 him from all demands whether this discharges the bond.  
 Co Litt. 291.  
 1 Co Litt. 212.  
 3 Cro. Jac. 200. It has been determined that this is a release of it - that  
 a debt is in present.

It will never release a covenant with broken  
 Cro Jac 489. It releases a person to B & the rent runs annually, then  
 Cro Jac 606. is no Debt due till something takes place besides the  
 2 Roll 408. covenant to pay the rent. The mere change of the term  
 1 Lex. 141. of the contract makes it a debt in present.  
 1 Talk. 578.

So where the case is so circumstances from the  
 nature of the transaction, that the transaction itself  
 will be defeated, there is no release - as in the case of  
 an award - which is that it pays to B & C & B executes  
 a release on the 1<sup>st</sup> of all demands in law & fact. The  
 award is not released - The old covenant that it was released  
 but they are not now a covenant.

It seems when the demand comes out of a contract  
 contingent, the release is not a discharge of it. B sues C  
 & C gives his Bail before it comes, & B, A & C settle & give C

# Contracts - Release 139.

in case of all persons he has of the estate.  
 In Jac. 170. To me. C. on his bond & C. pleads this release,  
 the 6<sup>th</sup> it was no plea -

The rule then is there is a contract when nobody  
 knows that there will be a breach of it then is one  
 which will release all covenants - to release "of all  
 covenants" would destroy a covenant not broken

Co. Litt. 292.

There is however one species of covenants not  
 destroyed by this. In C. the rule is, if a lease be from  
 L. to A. in fee simple or fee tail to B. in which there  
 are conditions on both sides, if A. in the case sell the  
 Land to C. & C. recd. not the fee for a breach of it in A's name  
 but he may sell in his own C. has acquired all the right  
 which A. had - Now in such case if A. releases all covenants  
 to B. it does not release him from these covenants, because  
 they run with the Land & are not in C.

2. L. 205.

one thing more - There are particular cases, where  
 the 6<sup>th</sup> Clause restrains the operation of the words all demands  
 to one particular thing, & if pleaded will cause to fail down.  
 A. owes B. 100. He does not give him 100 as a legacy. & then  
 B. says, that 100 is B's due him a release of all demands he  
 has against him - C. has a bond from B. on the note for the  
 100. the 6<sup>th</sup> release the operation of the word all & subject  
 the evidence to be gone into to show that this release will  
 not apply to the note - see too § 1<sup>st</sup> part 230.



## Contracts

## Lect. XXX.

## Award

Vide 20  
Bun. 274  
Ed. Mansfield  
opinion on the  
construction of Award

is a good defence & embraces a subject of great importance in This Lecture is designed to give a general view of the subject. The rules very much altered.

This award is a bar to an action brought for the same cause which has been submitted. An award is in the nature of a judgement, it is the opinion of persons on a point submitted. It is an universal rule that it is a bar to an action founded on the original cause of action. This award is not only a bar where the Def<sup>t</sup> wishes to take advantage of it, but it lays the foundation of an action where the Pl<sup>t</sup> wishes to take advantage of it.

This judgement of the arbitrators is a defence against all personal actions, except where from an adherence to the rigid maxim it follows that a special award is no bar to an action on a specialty when the Pl<sup>t</sup> goes by the deed itself. This in this respect resembles to record or satisfaction. But, if it were under seal it is a Bar.

In case a special award is a bar to a specialty you will remember this does not prevent an award from being made about a Bond for if there is an obligation entered into to abide an award & if the bond is afterwards

sued, tho you can't plead the award to it. the obligation is forfeited & you may recover on it. This far of an award's being a bar to a personal action.

The next thing to be considered is, what effect an award has as respects a real action. an award respecting real property is nugatory, because an award cannot give a title to real property. This cannot be done but by Deed. But in this case as well as that where a Bond is submitted, if there had been an obligation to abide the award, should there have been a suit on the original cause of action, the obligation would have been forfeited & a recovery lies upon it.

In Court our Law is so circumstanced that we can give a title - not to be sure by the award but by some ~~thing else~~ - Now if each party gives a Deed to the other of the Lands in question & delivers them to the arbitrators to be given up to the successful party, in this State where the Award is made, the Deed delivered & recorded the title becomes complete. In England this can't be done, because they have a maxim that the Lands must pass instantly. Now when the Deed is delivered to the arbitrators it is an escrow - after the award is made the party refuses to have the Deed given up -

## Contracts

These domestic judges are appointed by the parties -  
 The submissions are of two kinds. They are sometimes made  
 a rule of Court & sometimes not by the intervention of a Ct  
 being merely voluntary. In the former case there is an  
 additional security given in Eng. viz. if the party does  
 comply with the award it is a contempt of Ct & he is of  
 course liable to an attachment. This incident to all Ct's to  
 have this power.

In Eng<sup>l</sup> we have a further security besides the  
 attachment for contempt. Our Statute gives the  
 Ct authority to issue an Exceor where money is  
 awarded, in the same manner as tho it were a verdict -  
 True, if the submission was made about something  
 which is not arbitrable, they can take no notice of  
 the award - But we have not supposed this. Our Stat.  
 is an improvement upon the English mode of compelling  
 a performance -

This power of the arbitrators is very great with the parties  
 in a contract - If not contradicted, they have all the powers of  
 a Ct of Law or a Ct of Equity to settle the dispute - In case there is  
 some power which these Ct's have not - They have not only a  
 right to introduce testimony allowed by Law but each  
 party has a right to appeal to the other's conscience for

a true statement of facts. You can make the  
 law & equity of the case a rule in Equity.

Where the parties limit them to the same rules  
 as are established at Law & Equity they have no greater  
 power than those of the Law. If they are restrained to the rules  
 of Law they can go no further than those rules. They  
 can't appeal to each others conscience & if they do  
 the award will be set aside.

The manner in which an award may operate  
 in rem is different from what it does either in Law  
 or Equity. The award may vest the property without any  
 speculation - as a deed of sale to Jones & they submit  
 to arbitration - The arbitrator award that the property  
 belong to A. B won't deliver it up. A says I have  
 it & is willing to prove but the award. So the award  
 decides the right of property between the parties as  
 well as gives damages. So there is an advantage in  
 making the submission a rule of the Law. The subject is  
 made a rule of the Law. The arbitrator is about real property.

It must be a rule of the Law  
 as to perform the act

and as to go to the Law

as for the other he may

his action on the case.

They award that the title is in A. The B will compel  
 to give him the title & if he refuses, this will furnish  
 for contempt. The arbitrator can award a collateral act  
 to be given in satisfaction of a claim which a B of Law can't do  
 This is a rule in the contract of the parties.



## Contracts

criminal matter &  
 matter of divorce  
 are not arbitrable.

They reserve all the powers of a Court of Chancery in  
 inflicting penalties - They also reserve that B shall come  
 to A's house or pay £100. so that this alternative operates  
 as a penalty - But they can make the alternative is not disputed.

An award by parol may be as good as any other award  
 for the purpose of entitling the party to a recovery on the  
 award - This award creates a Debt as much as a judgement  
 of a Ct does - you may bring an action of Debt or of  
 Indebitatus Aft or an action on the implied promise  
 to abide the award - The submission implies a promise  
 unless it appears from the submission itself that it can't  
 be implied - If there is an express promise to abide  
 the award, you may sue him on the express promise or  
 on the award as you please - If the award is to perform a  
 collateral thing - there can be no Debt or Indebitatus Aft -  
 you may bring your action on the implied promise.

This submission may be by parol or in writing  
 & if it is in writing the award may be by parol - This  
 too may be restricted by the parties, unless the restriction  
 are idle & frivolous, as where the award was to be on  
 "gilt paper"

What used to be practiced & is now often, was to enter into a covenant to abide the award; & so found your action on the covenant.

The usual way is to make the submission & then to give a Bond conditioned to abide the award.

In best we give a Note ~~for~~ <sup>and</sup> & consider it exactly as a Bond.

You will remark that the Bond can't prevent a remedy on the award. There is nothing merged in the Bond. The original cause of action is swallowed up in the award, but the Bond does not swallow it up, & certainly not the award, because the Bond is made precedent to the award. You giving a higher remedy don't prevent the remedy on the award because it don't merge the award but is only collateral to it.

Our mode in best of submission is to give notes of leave to each other & deliver them to the arbitrators to be returned as they think proper. When the note is filed in 't they mean to dispute the award. What then is to become? Why they must state the facts & then that the award is good for nothing. Formerly we had a foolish way of conferring judgement before, but it is now gone away.

<sup>20</sup> This authority so given is revocable, & may be revoked at any time you please. The consequence is that if any of the destroys all the effects of the arbitration but of <sup>the</sup> ~~the~~ he don't make void the arbitration.

## Contracts

If the submission is perol, they revoke by perol.  
 If in writing they revoke by writing, it is said, I see no  
 necessity for this - but it is the safest way - If the submission  
 know of this revocation before they make their award  
 their authority is at an end. But the Bond is perfect.  
 What then shall be said on it - Can you chance it down  
 What will leave you to know what to give on the Bond  
 Can let Chance down the Bond & so do the Day. Or by  
 a late decision in Peake, & give the party all the  
 expence he has been at & pay him for his time &  
 trouble. They are not regulated by legal costs - The  
 principle is they indemnify him if they chance at all  
 & if they don't it would be highly unjust.

§ 111 XXXI The old rule was to be a perol submission  
 & then after to be made award. The modern rule  
 is to disregard these matters & to give effect to these awards.  
 You will therefore find the submission contained in a  
 judgment and what the Law now is I shall be obliged  
 to repeat it - but in former times -

The old rule was that the submission must be  
 made out of Ct. Now the submission is often made a  
 rule of Ct. <sup>+</sup> just by the Court themselves made  
 afterwards by force of a Statute.

\* The first rule on perol submission  
 of the award is that  
 the award is made in writing  
 & is not subject to  
 the award is given

# Contracts

167.

Submission by the act of the Parties - Is there any  
it may be verbal or by writing. When verbal, it may be  
sufficient to submit to the award without a promise to  
abide the award or it may be with just a promise. If such  
promise be made, it may be with or without a consideration.  
It makes no odds now whether it be one way or the other.  
Formerly it used to make a great difference. The old Law  
was if there was a submission in either of those ways & money  
was awarded it made no difference. But if the award was  
of a collateral thing they considered there was no Law that  
could enforce it. True if the parties had entered into  
covenants you could sue on them & recover. The Law  
first changed when there was a promise with a consideration  
as a part of the re. Then if a collateral thing was awarded  
they enforced the award. It was then held if there was no  
consideration at all you could sue on the promise.  
- at length it came to be known that if there was no  
promise you could not sue because there was an implied  
promise in the submission. So then now it is immaterial  
whether you get a promise or not or if you do make it  
it is with or without a consideration - you have only  
to get the submission & then sue on the implied promise  
to abide the award -

Mod. 35-

2d 961-5

1039

Talk 76.



## Contracts

The most common way is to give Bonds & slide  
by the owner which are forfeited by a reference to slave.  
There is a common practice among slave-lords really  
to submit to arbitration before they give any rights.  
Then enter into Partnership & agree that if any difficulty  
shall arise it shall be submitted to arbitration -  
A question then arises whether if one partner dies  
(as for example) whether the Will is subject of its jurisdiction  
by the partnership agreement - The rule in *Johnson*  
is that a Will not take his Will successfully until he  
makes an offer to submit to arbitration before he dies.  
or to arbitration to evade this rule then he is objection  
to his Will in Will - & if the arbitrator makes an award  
and he can then file in Will. I understand that  
there has been a late decision in the Exr. Ct. & get reported  
that these rules do not must be to of their jurisdiction.  
This would be the case referred to by Justice & the one  
in which I found in *Johnson* I don't know. But  
that this decision is correct. I am not sure. I think  
that any can say we must interfere until you have  
done your duty. But here a Will can say I can't  
proceed on action of account - can't be brought. It is  
clearly a breach of the agreement, but then cannot  
be taken notice of by a Court of law.

220. 5-45.

2 Brown 336

# Contracts

Success 169.

Restrictions of this kind certainly must be made  
between parties. In instance the same matter would be  
very of the Equity near any dispute they shall come at  
to arbitrators & have not as a law. He held that the  
10 mod 97. Restator could not make this restriction. It was an  
unreasonable restraint.

As to the State of the submission of depends  
entirely on the parties will. As to the mode of the  
submission, it is to be considered not as to the submission  
submitted need also from in the award or it is good for  
nothing, unless the parties agree otherwise. Submission  
is a kind of joint authority which cannot be separated  
by will & cannot be repeated. It is like a writ of Attorney.  
But if the submission is to the arbitrators and  
determination he is to do it on some time of them. There  
the award is good the made by two. So if there is no  
reservation of this kind & one of them refuses to  
award, two may make it, & it will not on this account  
be bad.

82. The submission may be revoked & then the party  
860. 82. may sue on the original cause & action.

If three parties or more also join in a submission one  
case is of revocation. Because in the submission one party  
860. 80. if you take all revoke it & the submission is void.

## Contracts

the votes of both parties conferring  
judgment before a single justice  
& the execs left with the  
arbitration to deliver what  
they shall advise - this is  
not good because if the  
arbitrator is corrupt & the  
in error - this has at least  
been advised in Court -  
if the advice is now advised  
as illegal -

Shovel. 62.  
Sept 290-2.

I have the penalty is  
chanced down by a fine.  
to the real damages & costs.

Sho. 22.

Shovelings after submission by a person in order  
to be in immediate possession - The execs are now  
in the law - and have been the other day advised  
they must wait a little. It is so the day is so  
in the year books. I have been told that  
the real estate was bought by the widow's son in such a  
lengthy time that the execs & the widow were  
in the possession of the land, & a conversation of the  
subject in Court was - The justice has been in error  
the submission was made by the execs & the widow is  
a forfeiture of the land. The old rule said that the  
execs are that a fine there was a submission to the  
justice & a conversation of the land was made for an  
action on the promise - This is now denied &  
the law - & determined not to be in a case  
manuscript case - This I consider perfectly  
correct because one party has sustained damages  
by the non performance of the other agreement -

### Who may perform

any person that is capable of making any other  
contract may submit to an arbitration & if he  
does not make a contract he cannot be bound



# Contracts 171

There was an old rule that an Infant, tho' not capable to make contracts, was capable to subvert to arbitration a Dispute committed on himself. This is not now Law. He can't subvert this any more than he can subvert anything else. An Infant can't subvert a contract, or a reflecting agreement, tho' bound by it.

There is one very singular set of cases which show the old Law on this subject. There was a contest for a law while in the 14th century whether any body else could bind themselves that a Christian should abide in marriage. We cannot see where a Christian should bind. I cannot conceive where this Power should not be limited. But some men were under an obligation that another should do a certain thing, tho' the agreement was void. The contract was void, but the Infant was bound. Therefore a Bond given to perform the same was void. This was given does not follow by any means. The matter has been finally decided that the man shall be bound by his obligation. The Crown & established Law.

Another question has been asked whether an Exor can subvert a dispute which his Testator had. The old rule was that he could not, but he can do it now, tho' he may be liable to some inconvenience.

Feb. 24.  
Nov. 14.

Nov. 58.



Page 216

15 R 691-

Bon. by. 1st. ed.

because the customer is in a position that he would get more than was given by the contractors if they make that out. The Exp<sup>t</sup> must pay the difference - and the Exp<sup>t</sup> is bound by the receipt.

Who are bound by an award?

Those only who are parties are bound. By this is meant that those who are not parties are not bound except where they have given authority to others to bind them. As where one partner submits things not within the scope of the partnership & binds the partner without his authority. The agent who submits can bind himself in his own personal capacity but he cannot bind himself.

Q. No. 128.

15 R 246-

Page 216-

provided L. has authority tho he signs his own name as attorney. If he had no authority to submit he could not bind himself. He cannot bind his client by a submission out of court, but he may by a submission which is made a rule of Ct.

Further than a great number of circumstances all agree verbally to submit to one person & an award is made they are all bound by it as much as the one who gave the award.

# Contracts —

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Swan

as a time & a place freightless of a. The by they  
 has a controversy with both the money - the  
 master with the ship's crew with respect to right  
 they with the value of a prize taken by that ship  
 this was denied & a submission was made. L & B  
 gave Bonnet & to see B & B but no other - the award  
 was that B's should pay a sum to B & B not more  
 - twenty - the master & crew. Here the B & B felt that  
 they had all agreed. The Bonnet were a more order  
 of security. The B & B a payment to L & B and in  
 a good payment. I presume satisfaction of Bon  
 money had & so would the cap B & B in L & B  
 each manner according to the portion of the share

Agd on October 25. They & the award must be final & that I was not  
 here. But all that is agreed by the being final &  
 final & put an end to that controversy. Here that  
 since it was final in this case. It put an end  
 to all controversy respecting the prize money.

1 Charge R -  
 Ina. Bar. 434

With respect to the right of the husband to  
 submit to arbitration things in pursuance, in right  
 of his wife. The rule is this - Every thing that he  
 may do in the course of the marriage, he may

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Geo Jan 44<sup>th</sup>.

1 Roll ab 267.

There is no doubt that the  
 names of the parties in  
 this is not true.

submit to arbitration - He is bound to do this -  
 If he cannot dispose of it during the arbitration he  
 cannot submit it - as in the case of a community or  
 any interest in the land or any thing growing out  
 of them. It was formerly said if the matter raised in the  
 submission involving an community for instance the  
 matter would be bound by the award - This cannot be true.

It has been generally held that where an  
 award is made after a Petition - the award is not  
 2 Kent 247 -  
 12<sup>th</sup> R 268.  
 If Bels would be held up the Pet<sup>r</sup> because the Petitioner  
 could argue his case to the Pet<sup>r</sup> court - But this is not  
 so now this it might be a good technical reason.

There is a defence of error they except where  
 the Pet<sup>r</sup> grows by Reed - It is very certain  
 Geo Jan 44<sup>th</sup>.  
 1 Rev 292  
 Geo Jan 44<sup>th</sup>.  
 1 Kibb 937.  
 Lawrence that formerly there were certain things  
 which were supposed not to be capable of being sub-  
 mitted to arbitration, or in award affecting them would  
 not be final - as a thing more certain by a preponderance  
 of a Pet<sup>r</sup> - or where the parties had liquidated their  
 accounts - This is not so now - There is no reason in it -  
 During all the time there is no question but of the parties  
 bind themselves in a deed to abide the award if they  
 don't the bond is forfeited - So if there is a

1. The title is not correct.  
2. The title is not correct.  
3. The title is not correct.

of 175

Submission about 175. A bond is given of  
Hence a refusal to make the bond is rejected.  
And thus one is arbitrable, no more being able to the  
award does not pass the title.

There is an old maxim in the Roman Law that  
some questions can't be left to arbitrators, as whether the  
person is a man or a woman or whether he is a citizen  
or Pagan, or whether the person is legitimate or illegitimate.  
This may be done - A submission respecting the inheri-  
tance of lands may be made & the question of Legiti-  
macy or illegitimacy may be brought up.

## Section XXXII. Who may be an arbitrator.

A few observations with respect to the qualifications  
of arbitrators. There is little difficulty on this subject.  
It is no objection that the person who is an arbitrator  
is a certain relation where these domestic trials  
are Law. But a distracted man or one deaf & dumb  
cannot be an arbitrator. So it is a settled rule that  
a minor cannot be an arbitrator. No I see no  
reason for it - Persons under the control of others  
cannot be arbitrators, as Jem. covert. Justinian  
says, because it would be indecent for a woman - & of  
course by his Law no woman could be an arbitrator.



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The Roman Law, says it is  
 delicate for a person who is to be an  
 arbitrator - the old English Law  
 says it is as well, but I  
 may be a better person with  
 the former reason -

Nov. 218.

+ mod - 226

But a perme sale as well as any the person may -  
 believe in the general of slavery & submission in any  
 could not be arbitrator. From that time commences  
 comes so that they are attended of person or felony -  
 cannot be arbitrators. Relationship is no objection  
 to an arbitrator. There are several cases in the Book  
 all decided the same way. The first was Hard's case -  
 You was a public officer & claimed something as  
 a dedund. The Archbishop of the diocese claimed  
 it also as his. I can't have agreed to leave it  
 to the Archbishop himself to decide who it was  
 as it belonged to the diocese it in his own power  
 & then I can't have wished to establish that the  
 Court would not permit him -

Nov. 43 - The Chief Justice & the judge the same opinion -  
 know of no case to the contrary in that there  
 ought to be one - The law has not gone on the  
 ground of contract - It has gone so far as to  
 say it will not let men be so officious as  
 to choose men, infants, minors to be  
 arbitrators. But if a relation was proved upon  
 the parties as an arbitrator it would be a most  
 unreasonable thing & the Court would undoubtedly  
 set the award aside -

Umpirage

This is a very common thing for persons to leave matters to arbitrators & if they don't agree then to leave it to a third person, who is called an umpire. They sometimes choose the umpire themselves. Sometimes the arbitrators settle in the third man, when they do not agree by virtue of their submission. The Law recognizes both. They must not however leave the choice for umpirage when they have the power of selecting by chance. The Ct held an umpire so chosen had no authority to act & that his award was void, because the choice

2 Vern. 185 was to be left to the sound discretion of the arbitrators & not to accident

If a submission is made to Arbts, & if they cannot agree to 3. And if Arbts do not agree & make an award - C may do it -

A great question has arisen, whether the umpire can in any case make an award before the time limited for the arbitrators to award has expired. The old rule was that he cannot. because if the arbitrators had refused might afterwards make an award - There is no soundness in this. If the arbitrators

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made one by the time limited if the umpire had also made one the latter would be void. 2 just many submissions are made to 4 to 6 to award for instance by the first day of January 1 of the next year, then D to make the award by the same time. As long as the old notion prevailed there was here a difficulty - This is not now Law. The umpire chosen may make his award by the time limited for the arbitrators and it is good, if the arbitrators don't make one also by the time.

Ky 347-

1 Jan 180

J. Jones 168-

2 Keble 222. 339

Another question has distracted the genius of Westminster Hall. When it was left to the arbitrators to appoint another, if they did not make an award by the first of January, when they could appoint him? Could it be done in Nov. or Dec? The old case says no - They had no right to appoint till the 1st moment - for they said there would be a concurrence of jurisdiction. This reasoning was to destroy their appointing at all, for they cannot appoint on the last moment any more than on any other time. This is all now at an end. They may make it when they choose, & the usual way is to appoint an umpire before they begin. It seems then now if the arbitrators refuse the umpire

Ky 347-

Ex. Car 263.  
8 R. 205. 1 Keble 74

12 & 1671.  
2 J.R. 645.



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may award at the time specified, & the evidence of the refusal is that no award is made by them within the term. This is conclusive.

Another question has been agitated, & there has been no decision whether the arbitrators having nominated one umpire & he having refused, they can appoint another? The opinions have been divided, & some say that they had executed their power by one nomination. They & nominating was appointing. It is now settled that they can keep on nominating till one accepts.

## The mode of proceeding

The arbitrators when once appointed without application have a right to give notice to the parties to attend at such a time. The usual way is for the parties to apply to the arbitrators, & this is what is meant by calling on the arbitrators. After being called before them, they may proceed to enquire as they please if not limited by the parties. They have power incident to them as arbitrators to adjourn as often as they please. If they award within the limited time. And they may make an award when one of the parties refuses to attend, unless he revokes.

5 Nov 119 -  
1 Lalk. 70.  
12 R. 222.  
Can. Eq. 20th 63.



## Contracts

When the arbitrators have gone into a hearing of a great part of the case, & do not settle the whole the question has been whether the umpire would have a right to take the case as far as it is unsettled & finish the remainder by settling the whole? The old cases are that he cannot. But the modern practice is different. I think the old cases are right. It is proper for the umpire to form his opinion on the whole matter. I think this was the intention of the parties. There is one case where the arbitrators settled every thing but merely stating the interest & the umpire did this & then took the whole & called it his umpirage - There was no objection made on this account -

1804-5.

I once litigate the case where a case was left to two & if they did not agree then to the umpire. It seems the arbitrators did not agree & appointed the umpire; but within the time limited they did agree & made an award together with the umpire. They said if the word then had not been there, it would have been good. I cannot see that it makes any

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Swind,

difference & it is now settled that it is good - for if two who are chosen agree, the agreement of the umpire cannot injure it - or the agreement of the arbitrators within the time limited with the umpire for the umpirage cannot hurt it - If the whole alphabet agree with him it does the award nothing.

Where it is left to three & nothing more is in the case, they must all, join. For it is a joint power.

If two of three or any two of them award by two is good.

i.e. where the 3 represent 2 go.

Another question is raised, whether the arbitrators when they came determined to make an award were obliged to give notice to the parties when they delivered the award? If there was no bond there was no debate. The notice was necessary. But if a bond was given would it be forfeited if no notice was given him of the award? This arose out of a technical nicety. He had given a bond & therefore was bound to abide the award whether he had notice or not. The rule was in the such case the party is obliged so far as this he knows when the award is to be made & he is to go at that time without notice. But if he is to go before the time limited on the award, the bond is not forfeited unless notice is given. There is not an authority where it is said no notice is necessary in case of a bond except where something was to be done.

1812. 2. 263.

June 54.

# Contracts

Nov. 6<sup>th</sup> 85. Subsequent to the award, and that the award is made so  
 Gen. Cas. 182-3. take notice himself as no dispute.

If the submission contain this clause, that they may  
 make an award provided they deliver it to the parties  
 due notice is necessary. Suppose one party says not  
 come will a delivery to one be a delivery to the other?  
 Yes. The party must however have notice that at  
 such a time it will be delivered with the notice then  
 have notice

There has been another dispute made where the  
 words were as above, whether the proving a parol award  
 satisfies the word 'delivery'. The Ct. determined that  
 as there were no words in the submission, but it should  
 be in writing, a parol award in this case was good.  
 I believe the intent of the parties was otherwise.

Kyd. 75-

There was another case, with these words, 'provided  
 it is ready to be delivered'. That said, he should believe  
 it meant to be a written award, but the Ct. case  
 decided the point, therefore I would decide accordingly.  
 One justice referred to the point was so determined.

Gen. Cas. 60-

These various matters are referred for decision as  
 whether they can promissory & if so an award

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within the terms limited on each of the matters -  
Either it must be on one & the same time. It is now  
settled that the award must be on one & the same time  
unless the submission of the parties is otherwise -

The restraints the arbitrators are under are many -  
They can never reserve any judicial authority beyond  
the time limited. Thus cannot judge beyond the day -

a case of this kind - They made an award about every  
Geo. Jac. 3<sup>d</sup> 5-185<sup>th</sup> thing except a controversy about fees & here they  
Bism. 20-110. awarded that such a sum should be paid as they should  
14<sup>th</sup> agree on after consulting a third person -

They have authority to appoint a third person  
as way of a penalty - I never knew of an arbitrator  
2 Coll. B. 244. laying inflicted a penalty & the idea is they never can  
except by way of alternative which was never disputed -  
But it is said they can inflict penalties other ways.  
I doubt it - There is no modern case -

They can reserve a minor ministerial act to be  
done afterwards - Suppose they direct a man to  
deliver over certain articles to another which are  
to be appraised by third persons. This is good - They  
can reserve it to themselves as well as to third persons -  
2 Bism. 20-110. given at the measure of an experienced  
surgeon. Arbitration can delegate no judicial power  
unless empowered to do it by the submission of the legal -

and den 13.



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An award was that one should make a confession to the  
 Jff at such a time & place as the Jff thought proper. This  
 was considered as a judicial power & could not be  
 delegated. When the award was of a security to be drawn  
 up by an Attorney, this was a mere ministerial act &  
 could be delegated -

Balk. 71-

Lect XXXIII. As to power reserved by arbitrators. In this  
 case the arbitrators directed that the release should  
 be executed by each party, such an one as should  
 be approved of by Chancery. La Hardwick says  
 & nothing is reserved but the manner of carrying  
 in award into execution, it is good - So where  
 they determined that the costs should be taxed  
 by the Court. this reservation was good. But if  
 they refer the costs to be taxed by any other person  
 except those whose duty it is to do this, I think be  
 an improper reservation. The award will not be  
 good. As for instance if I refer the costs - they

2 alk. 501-

2 alk. 519-

1 alk. 75-

1 Ed. 358-

Comyn. 330-

Hardw. 181-

Pla. 1305-

It is a judicial act in him. I do not see that  
 I give him any more than in any other person.

The arbitrators may make an award on the  
 same day on which the submission is made if they  
 think the former is doubtful -

## Qualities of an Award

This will be shown to you by pointing out what will make an award bad -

1. The first rule laid down is, that the award must not exceed the submission, i.e. must not be about any thing which is not submitted to them. Well what if they do? What is the consequence? One thing is clear, so far as they award about what is not submitted so far the award is bad. But will it not render the whole void? It was once held that it would - afterwards it was held that none was void -

Neither is the rule now. It depends upon equitable principles, & where injustice is done as to the whole, the whole will be void, if part causes injustice, this part will be void. As, a controversy about a horse between A & B is submitted. The arbitrators make an award both about the horse & a yoke of oxen. Here, if they award that B pay so much damages for the horse & so much for the oxen, this award as it respects  
 Mod. 309. the oxen will be void. If they award that B pay so much for both - the whole award would be void -

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and action to win the right in which it is  
 an interest of the law; "all actions for loss" are admitted  
 by this is meant all actions, <sup>in tort</sup> at the same time, not  
grounds of actions, if it were actions & complaints it  
 would include all. So if it were injuries.

The question has been raised, whether when the  
 contract is about the reality the arbitrators can  
 award a sum of money to be paid. It has been con-  
 tended that all this has to determine is the right  
 of property. This point however is now determined.  
 They may award a sum of money.

As to the question whether they may award  
 any collateral thing <sup>not in the award</sup> in satisfaction for a personal  
 injury, or any thing of the same kind, as slander,  
 trespass. Kyd thinks it is doubtful. I think  
 they may do it - & so are many of the cases -

1. 12.  
 2. 12.

2 La R 1039

1 Lalk. 76.

Where the award was that an acknowledgement  
 should be made; or a supper of <sup>the same kind</sup> provided  
 for the injury done no objection was made to the  
 award on account of the collateral thing -

2 Laund. 190-

"all Demands" include every thing, as all injuries,  
 claims &c.



A question of this kind has arisen. A dispute arose between A & B. They submitted "all claims & demands" & the arbitrators awarded about a dispute between A & his wife & B. Was this award good? one authority says they had no power to award respecting this dispute. It was not submitted. another says they have the authority. But the two cases may be different & depend upon the distinction. If the dispute between A & his wife & B was where the husband has the control & management of the thing in dispute, an award of this kind where there was a submission of all disputes between the husband & B is good. otherwise not, as where they respect the inheritance of her lands.

The arbitrators must not exceed the submission if it is true, but still they may meddle with things which will forward those that are contained in the submission. As they may award that money be paid at a future day, or that a bond be given for it & so on & so on, altho none of these things are in the submission.

Where Partners in Trade submit all disputes  
Bl. Pl 475. It is a rule that the arbitrators may dissolve the Partnership. It is not natural to suppose that this is contained in the submission. However so is the rule. It is of Master & apprentice. The relation may be dissolved.



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Upon a reference at this time different modes of expression are used. It is a rule that if they submit one dispute in C<sup>t</sup> they may include all disputes before the C<sup>t</sup>, & this distinction is taken, if they submit all matters in dispute in the cause between the parties

2 Bl. R. 1118 this means only the particular cause. If they submit all matters in dispute between the parties in the suit, this includes all disputes between the parties.

The arbitrator may award that some claim arising after the submission may be given in satisfaction of something happening before. Of course they may award a collateral thing.

It was formerly a rule that arbitrators could not award any thing about costs unless made a rule of C<sup>t</sup> because they all arose after submission. Many of the ancient cases are determined on this ground. The Law now, is directly the other way. Costs are incident to the thing submitted.

There is likewise another question. Where a release was awarded. Can they award a release beyond the time of submission? The old rule was, if they did it rendered every thing void. The modern rule is, it is void as to every thing arising after the submission & before making the release. Of course this must be proved.

# Contracts 159.

otherwise this is good for it is a rule established in a variety of cases.

2<sup>nd</sup> The rule laid down by the elementary writers is that the award must not extend to any one that is a stranger to the submission. This rule must be understood with great qualification. The old rule was if they awarded any thing to be done to <sup>or by</sup> a stranger it was a void award. This is not the rule now. There was an award that A should convey to B & his wife a certain piece of Land. This was held to be void. But why should it be so? If B is willing what difference does it make to A? an

1 La R 123.

5 Co. 77 ~

10 Co. 131.

6 Co. Cas. 541 -  
1 mod. 9. -

10 Co. 131.

Kya. 105.

award to a stranger is never void, unless it is so ways beneficial to the person in whose favour the award is & he complains of it. His good will can be shown to be reasonable.

An award was that B pay to C £20. This was held void. It is not so now, unless there was no benefit to the parties.

It is always to be presumed that when an award is made, that one party so much to another, it is beneficial to the parties. A & B have a dispute. The award is that A give B a bond of £50 & procure J. C. to sign it with him. It is void as to procuring J. C. to sign with A. For J. C. cannot be compelled to sign. This doesn't always render the whole void. It never does if the party in whose favour

1 Salt 74

## Contracts

A is willing to take B's bond without A's security -  
A is obliged to give it. But B is not obliged to take it.

When the submission is of all controversies of A B  
+ C on one part & D on the other, it means all joint  
disputes between A B + C & D. The old idea was that  
it meant all separate disputes between A + B B + C & C + D.

A + B are bound to pay C £20. A + B quarrel.  
A says it is B's debt & that he is only bondsman -  
They leave it to arbitrators. They award that A  
shall be released from all obligation to C. but they can  
award that B shall acquit A of all harm, by adding  
such a penalty as shall acquit him. This is award  
to a stranger too in one sense -

3- The award must not be made of the parcel of the  
thing submitted. They must make an award of the  
whole thing submitted. This must be understood with  
great qualification - Suppose the submission is of  
things real & personal & they award about the personal  
only. The old idea was that this was void. The modern  
rule is that the presumption is that there was no dispute  
about things real. If there was such dispute shew it -  
This is not all - If there is an award of only one thing, &  
there were other controversies, this is good unless there



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191.

Controversies were submitted to the arbitrators.

The arbitrators are not to look these disputes. They must be laid before them. The presumption is that they were not laid before them, because the

Bro. Jan. 400. Law presumes that where a man has a trust com-  
mitted to him, he will perform it well & faithfully.

Bro. Piny 118 Bond. & that the Court stand - it was good for they did  
award about the bond. They only used inaccurate words.

Bro. Jan. 200. 355 So in such general submission the award is presumed good  
1 Burr. 274. unless it be shown that other matters were laid before the arbitrators.

8 Co. 78.

Bro. Jan. 216.

1 Ld. Raym. 32.

It is a specific submission as such an action of trespass is  
with such a clause as this, that they will be bound by an award  
of all matters respecting the premises they can award only of the thing  
specified. There may be specific disputes submitted without  
this clause, the word as above - may they make an award of one?

8 Co. 78.

The old rule is that they may & then stop. This is irrational; the  
object of the parties was to have all disputes settled. There is a case  
directly opposed to this, but the Book is of no authority.

Bro. Jan. 366.

1 Co. 389.

Bro. Jan. 321.

1 Ld. 12.

4 The award is void if it is to do any thing contrary  
to Law. Under this Law it was formerly held that if the  
arbitrators award that damages should be given where none  
would be at Law the award was void. This is not now Law.  
As if a charge is brought being a Lien here no damages  
can be recovered at Law. But an award that I shall pay  
20 for his Lien charge is good.

2 Kent 243.



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5. The award must not be impossible not merely physically impossible - for if they award any thing for which there is no compulsive process to effect, this is out of his power, & in that sense impossible. But if the man has any power to compel the thing to be done, the award is good -

Lect. XXXIV. 6. The award must be reasonable. There are certain things declared to be unreasonable. Those things which cannot be supposed to be in the contemplation of the parties. As that a Debt should be paid by service - There are to be sure (in law) laws by which men may be assigned out in service, but an award that a man shall serve another so long is void being unreasonable. There are some nice cases in the books, as where money was to be paid at the house of a stranger, this was considered as unreasonable, because it might perhaps be used for trespass, but it is now settled that such an award is good. <sup>if the admission of the fact is a reasonable one</sup> In general any thing that a man is to do by an award which cannot be supposed to be contained in the submission is void as being unreasonable. So where it was awarded that the Defdt should pay a part of the Debt - the Plt accept it, this is void, because a man is not obliged to receive his money in parcels.

2 Co. Inst. 226.

3 Lev. 153.

2 Mod. 304.

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193.

Many collateral acts are easy to be done & are reasonable - as that the Defd. shall deliver a horse in lieu of £1000. This leaves open a door for the mind to consider what is reasonable & what not.

7 - Another quality is that it must be advantageous. It must not be merely negatory in itself. Under this head are ranked some things which do not belong to it as where the award was that the Defd. should go into the Pennance County to do the business of the Opp. this they say was a bad award, because it was not advantageous. It belongs to the last quality of an award, <sup>the award must be</sup> if they award that the Defd. shall vacate his land, or his house, so this is a void award, because it is negatory. It might or might not be void as the case may be on the whole circumstances. But the least rights of A to the Land would make the award good - There is a strange case, where A. man & B. a woman submitted to the arbitrators awarded that they should intermarry, & the award was held bad on the ground that there was no advantage. This is doubtful - It is clearly unreasonable. Suppose A has in his hands B's title deeds, which he has no right to keep - The arbitrators awarded that A should deliver them. This was held by the Ct to be advantageous, tho understood not to be formerly - For

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It might prevent a Law suit. Yet there are cases that do not square with this, as where goods were ordered to be delivered over. I conceive this award was good. It is said there must be a recompense for the injury. In the case of the Seeds before mentioned there may be no recompense. on this ground it has been tolden where it had a claim agt B & Bay left of the arbitrator, awarded that they should requit of each other, this would be bad. This was said to be bad. The Law is not so now. Under this head they put another case, when they awarded that a claim agt B should be paid unless B would go before the Mayor & swear he did not owe it. This is clearly unreasonable & a wide door open to perjury -

It is said that it is not  
a rule of law

§ - The award must be certain The old rule was that it must be certain on the face of it. The rule is the reverse now, any thing is certain which can be made so by an. Standard. As where they awarded that the costs in a certain Law suit should be paid. Here this was uncertain on the face of it & void according to the old rule. But the Modern rule is, you may make an award that the costs were so much, & therefore the award may be sustained



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Jan 24/2. I doubt if they would that B pay it so much as a  
yard and a half he ought, this would be void both  
according to the ancient & modern rule.

Co. 77-  
he 612 432 In another case they award that A shall not  
repleat B & shall give a bond that he will not. Here  
there is uncertainty for there is no sum specified  
which shall be inserted in the bond. If you can make  
it absolutely certain by referring it to any thing else the  
modern rule is that you may enforce it.

Co. 525- A & B owe a sum of money to D & by request  
to be bound for them, & he was afterwards A & B have  
a dispute about what share each of them ought to pay  
They submit & the award was that they pay equal  
shares of a Debt owing from C to D according to the  
old rule this would be void because there is un-  
certainty. But by the modern rule it is good for they  
may use that the Debt is £200.

Put. 550.  
Co. 124. They award that a man should pay on such an  
occasion as much as a quarter of malt would fetch.  
Is this void? By the old rule it is. In a late case the  
Court say it would not be, provided they had specified the  
place where the malt is sold. Now if you can take  
out of the old rule by agreement the award would be good.



## Contracts.

6 Mod. 244.

2 Ed. R. 1076

2 Ed. R. 358

120. 2c. 223

12 mod. 526

2 Ed. R. 545-

2 Ed. R. 208.

6 Ed. R. 766.

2 Ed. R. 612

In addition to this rule of making an award, the law has gone further. They have adopted this rule. Take the whole award upon such a construction that men will readily understand it. altho a strained construction will render it uncertain, it shall not be void on the ground of uncertainty -

When the practice of making awards in the alternative was introduced it was objected on the ground of its being uncertain & once Lorden to be v. Putshur. Compence settles that such an award is good -

It has been objected that if no time or place is fixed for the performance of an award it was uncertain. However where money or articles are to be delivered there is no necessity for the time to be fixed. If it is money it is to be paid immediately. If articles in a reasonable time. If no place is fixed it will stand on the footing of all other contracts where no place is fixed -

Any uncertainty in the award differing from the description in the submission was formerly held to be void. It is not so now. They say again. Help this by agreement.

There was another rule before now at an end. that where an award was made it must appear

# 197.

## Contracts - Award

that the award was really made to satisfy the claim. Now this is not disputed. But the question is does it appear? They say of the award about the premises or in consideration of the trespass. If there is no difficulty. But suppose they do not insert this in the award only that \$10 should be paid. According to the old rule this award would be bad. This has been held on with some nicety. I do not know any decision directly contradicting this. The Court has been determined to be good. That the award were divided on this point, because the presumption is that it was made to satisfy the claims contained in the submission. Upon the true construction given to awards all these niceties are done away.

9. The award must be final, not so that there can never be any suit brought but that there shall be no suit on the original cause of action, because if a bond is given it lays the foundation of an action. The parties here had suits of each other; they awarded that all these suits should cease. Did I release them? No. My award that each party pay his own expense the Court say this puts an end to the suit. It destroys the original cause of action. Because this is fairly inferred from the award.

2 R 246-

49 Contra

1100. 332.

do 34

2 R 10

do 92

1 Jun. 274

Ms. 903

110

Ida. 59

291 282

in case truly marant, it, the I think it is called as  
It's called the bobber case -

They may remain a thing to be done at a future day and it must not depend upon a contingency for it does the un-aided world -

There was a rule that there must be a mutuality  
i.e. something must be done on both sides. This is now  
done away. It must be mutual. But they were

July 18 1861

that a release should be given His mutual without.

Com. no L. 308.

The award settles it for us - can be no recovery on the original cause of action -

I must now pay some attention to the construction given to reivinds in order to render the important question whether an accusative <sup>ind.</sup> part renders the

Salmon. 108.

a sole word - The old rule was that the intention of the arbitrators should not be regarded at all. You must take them literally - They called their judgment & there could be no conjectures. This is changed by the modern rule. The intention is to be regarded in as far as much as in a will - the moment you fix the intention you fix what the Law is - "When the award was that 4 May 13 £500 in lieu of all controversies. What was in the submission? Why 5 or 6 -

Hutt. 9 - The old rule was that this was void - The modern rule is that all controversies here mean all submitted. The award was that A deliver up to B certain goods B pay him £100 - The old rule was that this was void because B had the liberty to say or not the modern rule is that it is good - For B is to pay -

120. 54

Another case where it was awarded that B receipt of it in satisfaction of all demands a bill of Sale of certain articles they contended that it was optional with B to deliver the bill of sale or not - I think it should have been determined otherwise. The award contained enough

La P 612 - compelled B to deliver it. -

Sec 1. XXV. As to the construction of Awards - The construction now is to give them effect if possible - an award that A shall pay £50 to B in full of all Demands. This would have been void according to the old rule because it was not all demands up to the time of submission. The rule now is that this means all demands up to the time of submission - a case of this kind likewise where notice was required. There was a contest between a Parson & his parishioners about not giving notice when they should cheer their sheep. This was submitted to the arbitrators awarded that they should give notice when they were asked to cheer. The modern rule here means that they give

not 35 -



notice at his house if he is then very well if not it is sufficient.  
 Release was awarded - The old rule was, that the award would  
 be made when release was to be made by both parties because  
 it was not insensible that they were made up to the time of the submission -  
 The award means this by the modern rule but suppose the  
 release was to be made up to the time of the award & this was  
 not in the submission? This is good by the modern rule provided  
 they execute a release up to the time of the submission.  
 The award is void only as to what happened between the  
 submission & the award.

1 Pitt. 365

2 Pl. R. 1117

2 New 169-

1 Ed. 2<sup>d</sup> 115-

3 Rev. 158-

1 Shaw. 212

Culver. 545-

3 Mos. 264

10 do. 201

2 Ed. N. 964

Now for the question as to an award being void in part  
 & good in part. This is an important point to be acquainted  
 with. I must take it by parts.

2 Roll. 40.

2 Lev. 6.

As to the old rule, I say, that if it was void in part  
 it was wholly void. This was found extremely hard & they  
 were in the reign of Jac I. to the opposite extreme. The rule  
 now establishes is this - The fact is sometimes being void  
 in part makes the whole void & sometimes not.

When it is void in part & it is made on one part only,  
 the whole is not void if the party is willing to accept what  
 is rightfully awarded - as is here A & B submitted a con-  
 troversy. It is awarded that A pay B £20 for a thing with  
 the submission & £10 for something without it. Is this void?  
 It is as to the £10 without the submission & is not as to the £20 with it.

void void void

Contracts void

Swards

If B is willing to take up with it A must go & tender it. Suppose the award was that A should cease to prosecute all the suits now depending before the Ct of B. The truth is there are some suits depending between the submission & the award. The award as to them is void. But A must cease as to the others, & B has no right to complain. He has got all he could get by law. So a lone the award was that it give B a bond with surety. It is void as to the surety. A must however tender B his own bond but must B accept it? No: He need not unless he chooses. There is not that mutuality which is requisite. B has not got all the arbitration intended. But it is not competent for A to object if B is willing to take it. A must give his own bond.

See B. &amp; S. 252

2d ed. 6-

Now the award was that A & his wife in satisfaction of B's claim, should convey Black-acre. This is void as to the wife - How shall A convey? Yes A is content with his title - & can't object to the award, being void - And where the party gets all that was awarded by the arbitration. He is obliged to take up with the award. Then he does not get all it is optional with him to accept or not -

2d ed. 3-

Indeed this is the rule "Whenever there is an award on both sides & the mutuality intended by the arbitrator, the award is void in toto. If one awarded against the other should pay £100 to B & the other B's wife should convey to A

## Contracts - (Twards)

10 Co. 577. This is in fact void - there is nothing void  
 10 Co. 281. note it - but in it respects the wife the award is void -  
 shall I pay the £100? No: because he can only get  
 the title of B & the true title is in B's wife -

2 Ld. 293. As was awarded to pay B for task work & B pay  
 £25 - The former part was void - now shall B pay  
 the £25? No: if he can't get the task work -

10 Co. 837. Moreover the award is out of the submission & they  
 632 award an aggregate sum, this award is void in toto  
 as in the case of the horse & even mentioned in a former Lecture -

10 Co. 98. I also in every case, where if A is to do this thing, & that  
 2 Ld. 293. & B is to pay £100 for the same, some of them are out  
 10 Co. 837. of the submission & some are within it which A is not  
 obliged to do, B is not obliged to pay the £100 - A is not  
 bound to do what is void & B is not bound to accept -

10 Co. 131. The rule laid down by Coke was, if there was  
 any one single part which A was to perform, that was  
 good, B was obliged to do all his part. This is manifestly  
 unjust. The idea now is that what B was to do was  
 in consideration of what A was to do; & if the matter is  
 so circumstanced that A cannot do his part, B shall not  
 12 Mo. 557 perform his - The case in Coke is said by Powell  
 to have been reversed -

# Contracts (Awards)

203

The next thing is, if any part is void. If the mutuality intended by the arbitrators is obtained the award is good as where A is to pay 400 £ less of all demands at the time of the submission & B & C is to make a release up to the time of the award. The latter part according to the old rule is void - But this release is evidence that he paid the 400 £ unless if no release was given the payment discharges the demand & the mutuality is obtained.

The last thing is this: if the party is awarded to do a thing, & the other party is willing to accept, & the mutuality intended by the arbitrators is obtained the award is good - as where A & his wife are to convey & become with a good title deed, signed by himself & wife, this will make the award good. This is the whole subject. It appears then to be this. In all cases where there is a submission between the parties & one thing is out of the submission & the other is not, if they award an aggregate sum the award is void - Yet if the thing to be done on one side will not amount to any thing, & that is the good part, the other party is not bound to accept - & in all cases where the thing to be done on one side is good & the thing to be done on the other side - if the latter will not perform his part the other is not bound to do his -

Arbitrators awarded  
red underlined. Deeds  
'is sufficient  
Barnes. 50.



## Contracts - Awaives

Because there is a want of mutuality. But if the mutuality is obtained, the other party is obliged to do his part. This has been a very perplexing subject & always will be to the student. The reader appears to be furnished in a great deal of detail.

As to the form of the awave, i.e. written or verbal, the rule is, this is immaterial, unless the parties have made a submission. Because the submission is in writing it does not follow that the awave must also be in writing.

2 Kent 246 -

Palm. 121 -

Burr. 5th -

With regard to how far the arbitrator must abide by the provisions made in the submission respecting the form - the rule is, if they make any sort of provision & can apparently give it effect to the awave, it must be complied with.

Performance of an Awaive

The next thing is, what shall we construe a due performance of an awave. It is not always necessary that it should be performed literally. Suppose they awave that A deliver up the East side & testament of B. A has gone & delivered it to the proper officer & got letters testifying - Now he could deliver a copy & this would be a compliance. This is like the case of deeds which are out of the hands of the person who is to deliver a copy is good.

3 R. 119

6 Mod 34

# Contracts

205-

So when a contract was to be given up to the time of the award or up to the time of the submission is good. The great thing is if any man will accept a performance different from the award it is a compliance, as when A is to convey a deed of his farm to B. B says that I convey the farm to C I have sold it to him. If A conveys to C by deed it is a compliance with the award - you may show by parol proof that he did so direct -

18<sup>th</sup> 187.

XXXVI When a performance different from the award is accepted your plea is performance - then that he accepted a different performance, for it is not usual & satisfactory - & if the performance is materially different from the award so that it cannot be performed, he may plead this as an excuse. Then he must offer to perform. Then is one question settled different from what it used to be. Payment is necessary to be made & made & bonds are entered into for the performance of the award. at the end of the 6 months the money is not paid. In ordinary cases the bonds would be forfeited. But here if the money is tendered before action is brought, there can be no recovery on the bond - In all other cases the bond would be forfeited, the nominal damages might in many cases be given - You are not to understand that if the

18<sup>th</sup> 187

18<sup>th</sup> 35  
in our case

Walden

## Contracts (Sovereign)

Fr. 903  
2 m.

man would perform the thing awarded to be done but does something else & the submission bond is forfeited - as is here a bond was to be given payable at year hence - He gave it, & would pay it by the time the submission bond is not forfeited -

The award was that A & B made a particular price of land to B & B pay so much rent now if he don't pay will he break the submission bond? No; there is a covenant in the lease & a woman must be had on that.

Remedies to compel a performance  
The remedy upon a verbal submission there being no covenant or bond to perform, is to bring an action of Debt or ass't for money or an ass't contract on the submission to perform it. If the thing is colateral you must bring an action on the ass't contained in the submission, & (H.C.) the only action used - there is an exp. en ass't - In doing this you must state the submission as introductory to your action - You must state it as it was viz that you had a contract - that they were arbitrators agreed upon by the parties & that they awarded so - & then assign in breach - There is no necessity in this case of setting the award out at length. But the ordinary mode of submission is by a bond. & then you will remember

# Contracts 207.

you need not bring your action on the Bond unless  
you choose. But if you do the mode of proceeding  
is as follows. The Bond is a penal bond. The action  
is brought on the penal part of the Bond. The Deft-  
wishes to make a defence. He prays oyer of the condition  
& then this appears on the record. He then pleads, after  
reciting this that there was no answer ever made. This  
is his ordinary plea. The Pff. would naturally say  
there was an answer. This won't do, tho' often done.  
He should reply over an answer & set it forth at length  
& then assign a breach for the non-performance. Now  
you have got at the cause of action. The reason why he  
must reply this over & assign a breach is that the words  
"no answer" in a plea in bar don't always mean  
literally no answer. It may mean this, & it may mean  
that there was no legal answer. If then the Pff.  
only pleads that there was an answer, the question of  
law & better the answer is good or not goes to the Jury.  
After the Pff. has replied over, if the answer is bad the  
Def't may demur to it. If not he rejoins the same  
as before "no answer" & this is a rejoinder means  
"no answer in fact". This method is not absolutely  
necessary. He might have said "He ought to be barred because"  
In the replication, the Pff. must set out that



## Contracts - (Continued)

Inter. 35 b. 8. Dec. 273-8.

27 Feb. 77. 30c. 330. East 1880. Every thing which was contained in the submission

was done in the same (will merge)

to 2. 42

1 Feb. 114. 2. do 156

Off. P. 114. 2. do 156. The agreement is stated which will entitle him to a recovery, except to performance on his own part, which must be made. If the thing to be done was a precondition before the other did any thing he must see performance on his part. If it was a concurrent act or a subsequent one he need not see performance, except when the award was like this, that A together with his wife carry B back to B. Here he must own that they have both done it.

Yoran & refusal is enough. If the thing to be done can be done without the concurrence of the other it must be done. Hence the question now the

Case 23 -

Case 24 -

It is to find if there is any defect in it.

In an action depending upon the award, the plaintiff may plead that he never submitted. But in an action on the bond he can't plead "no submission". He must plead non est factum, without paying over of the condition. Because if you do it appears there was a submission. The P. 114. 2. do 156. you see must assign

1 Feb. 240 -

John 24. 78. 158 a breach, else there is no cause of action, & no subsequent pleading will help it. It is in the award is not void

1 Feb. 240. 123

1 Feb. 240. 123. 1 part 2 and 3. You assign a breach in the bond part, then in 2. 301. can be no recovery - for it cannot appear but that the award was on the void part

# Contracts

209.

Oct 221. When an award was that, however it should be made  
on or before the day &c, an agreement that the Defd  
did not pay on the day has been held to be bad. But  
Ex. 293 if it was not paid on the day, it would be good. The best  
way is to state it exactly as it is in the award —

There is a case where the award was, that he paid accord-  
ing to the tenor of the award. This was held to be good.

Suppose the award was that you was to pay on such a  
day & you did not because you did not find him at home.  
Even if you will shew this in your plea, it will be as good  
as if you had paid him. Very often money is awarded  
to be paid when requested, now the rule is, he must be  
Ex. 640 requested before he becomes liable; & this must be averred.  
If the award is in the alternative, the agreement must  
be that he did not do either.

There is a rule that appears to be of long standing.  
That in assigning a breach upon a bond, you could not  
make an assignment of more than one breach. The  
reason is, it is not best to trouble the Jury with a thousand  
things. Because if you prove one breach you will be  
able to recover on the bond. The rule is here that you  
must assign but one breach. There is no reason in it.

But you need not assign but one. There is a case  
Wil. 267 which contradicts this principle. It was an action on an arbitration  
bond. The idea originated in this that you ought not to hamper  
the record with a number of breaches.

## Contracts - (Words)

There are cases where there need not be any  
 agreement set out by the Pff or breach alleged -  
 See Jac 300. There are where the Defd admits it by pleading  
 some collateral act -

When the Defd has made no admission & there has  
 been a plea to the Defd can only deny or  
 plead no denial -

Lect. XXXVII I wish to present to you all the different modes  
 of pleading as a matter of defence - I have given you  
 the ordinary mode in all cases where the person means  
 to contend that the cause is ill got or never was made -  
 I will now mention another mode where there  
 is a submission of all matters of controversy, with a  
 proviso that the award be made if the premises: the  
 Defd after paying over of the condition to bring up  
 any question which respects the point that the arbitrator  
 has not awarded about anything that he ought may  
 plead that he does not swear about the premises -  
 The Pff may then set out the award & it will appear  
 whether there was an award of the premises or not  
 This does not however prove the award to be true for the  
 Pff may reply over that there were other controversies of  
 which the arbitrator had no notice. To this the Defd  
 rejoins that altho there were other matters in controversy  
 yet the arbitrator had notice of them, & then the

## Contracts (Swords)

question of notice will be the issue. In this case the only question is that of notice. & there can be no answer by the P<sup>ff</sup> except demurring to the notice & so there

Case 200. was no notice the award is good aliter it is Case

Case 512 - This I think the best mode of pleading -

There was another mode of pleading for the Def<sup>ndt</sup>. viz for himself to state all, his object is to show the award is illegal. He may plead after praying ojo, reciting the condition & stating the award that he never made any other. The P<sup>ff</sup> can only conced to the Def<sup>ndt</sup> plea & then the question is whether the award is illegal or not comes immediately up. If it

Case 838. is illegal he has admitted every thing which will tri-  
him. If it is illegal, there can be no recovery -

Still the old method of pleading "no award" is the most usual way of pleading - the other may become

He may likewise if his defence is performance, set out the award & then aver performance on his part - The P<sup>ff</sup> denies this if there is no question arising out of the method of stating the performance. as to this question there has been some difficulty. When he sets out the performance the old rule was, that he must set out how the performance was effected in every particular. As where a release was averred to be made he must show what the release was, that the C<sup>t</sup> may know whether it was a release or not. The rule was & is. In the



If he ever wishes to do any act he must do it that  
 he does do it, & then how the modern rule is, that  
 performance is enough. He will state no more than that  
 he performs it. I think the modern is defective as  
 the ancient rule - the true rule I conceive to be this  
 & I should suppose that things remained to be done  
 about which a question of Law might arise as  
 respects the performance. I would state how I  
 performed them - If no legal question could arise  
 I would merely state performance. In the former  
 case, where a law was to be given, I would show what  
 he did say, & that I gave such a deed - In the latter  
 case where it was merely to witness their work of execution  
 I would only state performance unless there is a  
legal matter of fact to be ascertained. Sometimes  
 you cannot hear performance strictly, but you may  
 find from it that you was ready to perform & that the  
 off was not ready at the time of the act. It is said that in  
 such cases you must prove that you "have been always ready to  
 perform." I see no necessity for this.

Now the Defdts defence is that there was something  
 for the off to do which was a condition precedent to his  
 only to state this after the award is set out, as where the  
 off was to be at the expense of procuring the instrument  
 & that he should present it & that when the Defdt should sign it  
 for but R. action of the Defdt the Defdt proved that the off had

Contracted - Amount

reads present the instrument & for him to sign & that  
 it is necessary for him to sign it - I do not think this last part  
 is necessary - The presumption is that he is ready to sign  
 the instrument. He needs only say that the M<sup>rs</sup> has not  
 done his duty, for he is under no obligation until he has.

It seems very different from all this. The M<sup>rs</sup>  
 brings an action upon the Bond - The Court sets out  
 & awards "no award" which here means no award in fact  
 & the M<sup>rs</sup> may recover in one single case by replying over  
 that there was "a revocation" In the replication it must  
 appear that the revocation was made before the award -  
 This is all that is necessary - The Court cannot demur  
 to this - He can only say the fact.

860. 81

There has been a question raised, which on principle  
 can be no question - An action was brought upon the Bond  
 & in the submission there was a provision that the award  
 should be made on the first day of May - The parties  
 went to trial just before this time & finding the  
 award could not be made by the time specified in  
 the submission, the parties agreed it should be extended  
 to the first day of June on which day the award should  
 be made - It was so made - The question was could  
 he recover on the Bond? How can there be any question?  
 The evidence of an agreement to prolong the time is proved  
 The condition of the Bond is that it should be made on the

## Contracts (L. Ward)

first day of May. It was not made on that day. One of the M<sup>rs</sup> replies was a subsequent agreement. 3. R. 592 He can only have it by force & it has been decided that this cannot be admitted. If the action has been on the award, it might have been admitted; or had the agreement been in writing & sealed, it might have been introduced in an action on the Bonds.

Submissions made a rule of Court

As to Submissions made a rule of Court. There are regulations in some of the Stat. of their own. In the U. S. there are no Statutes exactly like this. It is best however to understand it. The reference by rule of Court was made long before any Stat. In the first instance they would not grant an attachment for Contempt. This is now done away. They then established this rule that they would if there were no other way to enforce the award grant an attachment but not without. In some of the U. S. this is now the case. But in Eng. the Stat. has made an alteration. In Eng. we issue an attachment only in two instances & this under our Stat. not on the ground of there being another remedy but because an execution may be issued by the Court. Where the law is made, an attachment will come & where the award is about a right as that of a right to

1 Ed. 452  
34 R. 35

# Contracts - Howard

215

are a reason of action which B interrupts. Here  
an attachment may issue in con. The principle  
in the U.S. generally is, that they do not grant an  
attachment for contempt where there is another  
competent remedy - But how do you get at  
this business? You want to get an attachment -  
You must in this case call upon your antagonist  
for a fulfillment of the award. Indeed it is said  
you must show him the award that he may see  
what it is - If he refuses to perform it, you must  
go into Ct & upon affidavit state that an award  
was so &c that you showed it to him & that he refused  
to perform it &c, & pray that a copy of the rule of Ct  
may be served upon him & compel him to answer  
why he does not perform it. Well it is never another  
affirmation is then made that it has been served &  
the man does not appear, then an attachment issues  
of course - If he appears then the con. & will take  
notice themselves - They will not issue an attachment

Salk. 73 - For there is no contempt. If they find the award to be  
10, mes. 333. a good one they will order him to perform it & if he  
refuses to obey this last order, an attachment issues

It has been questioned, whether after an attachment  
has issued, the man take his goods on the Poine? This  
depends on the nature of the attachment. Is it satisfaction?



For by no means it is only a method of compelling him to do his duty - But suppose his attachment on the Bore & afterwards sued on the award judgement obtained & his body taken the attachment then is discharged because you have now obtained your satisfaction - The body is as good as the Cash -

It is not usual for the Ct to grant an attachment when one is sued on the Bore & his body is taken the it may be done -

This power of granting an attachment is discretionary with the Ct at the the award is not yet made -

1 Burr. 278.

### Power of a Court of Equity to interfere

Where there is an award to do a collateral act, Chancery have interference to compel the thing to be done. They never interfere in the case of money because there is an adequate remedy at Law. Chancery interfere under discretionary power - When therefore the submission is under its own rule they will enforce a specific performance of a collateral thing. But suppose the submission is voluntary & the award is to do a collateral thing will Equity then interfere? The elementary writers say they will in some cases decree a performance. I think it may be laid down as a rule that they never will unless there has been an acquiescence in the award or a promise to perform subsequent to the award - as in this case - The Stiff

1 Atk. 74

## Contracts - (Continued) 217.

was obliged to pay the Defdt £900 & the Defdt has to do something on his part - The award was doubted on account of having some objectionable qualities. The Pff says to the Defdt will you acquiesce in the award? The Defdt says 'Yes' - The Pff sells his Land & raises the £900 & on hence the Defdt agrees to accept - Phas of compella him, on the ground that he has been guilty of fraud - This is the whole power that Phas ever exercise. There is one thing determine that they never will combat a Defdt under these circumstances to disclose a breach so that he may be liable to a forfeiture of the bond - I don't think the reason good, tho the principle may be for the bond would be chance's down to real damages -

When an award is made under these circumstances there will be a rule that if the Pff will sue on the original cause of action, he might be sued on a particular form of action. This has grown into disuse on account of the introduction of a new set of principles. An award is now pleaded in Bar to all causes of action, whether the award be performed or not. This is not here the question. To be sure when you are sued on the award you must plead performance, if that is your defence -

What awards may be pleaded in Bar -

The next question that arises is what award may be pleaded in Bar? Any award is good that has the legal qualities of an award or in other words

## Contracts - (second)

can now justify the 2<sup>d</sup> can & can 1<sup>st</sup>. means  
of contributing the performance -

§ 101 - XXXVIII - I previously observed that I conceive the  
Law is, that whenever there is an issue made, & that  
arising in point of Law, there is Bar to the original  
cause of action; I ought to mention that there may be  
some doubt about the rule - It is not supported so  
far as I have observed it by any express decision - but  
it is supported by two of the best writers on the subject -  
Whenever bringing in action will be a forfeiture of  
the Writ, a legal issue will be a good plea in Bar to  
the original cause of action Where there is no duty  
in the law on the one release there is a dispute -  
Here say you may bring your suit on the original  
cause of action & forfeit your Writ this is nonsense  
& makes not I think be law - Eng. law

Walkley --  
Lund 50 -

There are cases where the 2<sup>d</sup> will may place a  
submission made between the 2<sup>d</sup> & a third person  
as where A sues & attaches B. & is bound to it for B -  
then refers this constitution to arbitrator. & it is agreed that  
B pay so much to A. now when we come to see to on the Writ  
in my plea, the answer & performance by B. Then he was  
in party to the submission

So where the Law is so that a recovery as one is a Bar to

# Contracts (Sword) 219.

recovery of another - as a law it is up one point  
to another - for judgment up one is a law to judgment  
of another - Now suppose that B & C had committed  
a wrong & B being on it the complainant only of B & C is  
from R. 328 submitted & the arbitrator awards that B pay 1000. Now  
if he afterwards sees C or D they may plead the award  
& performance in Bar -

There is such a thing as a temporary Bar Suppose  
B & C now in the submit - contingently to be awarded on  
the basis of Feb. to Jan. & then B on the original cause  
of action before the award could be made. Now B can't  
plead an award in Bar, for as yet there is none made -  
What then shall he do? Why this submission would be a temporary Bar

the mode of relief up' an award claimed the law one  
There has been considered so far in respects a C of Law  
upon Eng. principles on C of Law can only set an award  
aside when it turns the constituent principles of a  
legal award. These are all intrinsic causes appearing  
upon the face of the award. But for causes extrinsic they  
may be set aside in a C of Chancery. For then all might  
have been set aside in a C of Law had it been on account  
of Eng. principles. Suppose there has been partiality or  
corruption in the arbitrators - This will not set aside  
at Law, unless the submission has been made in rule of Ct.  
But Chancery will do it - So Chancery will set an award aside for other  
things. The cases are to be sure few, but they have the power -

2 Ver. 315

Atk 527.



220- Arrest

# (Contracts - Awards)

If the award has been made with the arbitrator plainly shows that the arbitrator has some liberty they overrule

- 3 Oct. 644 - the arbitrator of Lewis they will not the award aside
- 2 Nov. 605 - then I am the arbitrator very ready to in relation to the arbitrator - you are of Lewis -

A Chamberlain is not even an award to certify a mistake appearing on the face of it this may be a mistake in law or in fact. The reason requires no correction or particularly for reasons contained in the award. The award however there is given only no necessity for it. If however there is then

- 2 Oct. 155: 306 - all require - a where the award motion to set the award aside within two terms. As soon as could be no remedy, but Chamberlain in the process - a how in order to know how far Chamberlain has gone with respect to improper awards I will mention a few cases -
- 2 Nov. 316

There was a case where two of the arbitrators combined to get together & then the matter finally without the other known as, this about 1840 made an award. The award was held

- 3 Nov. 415 - refused to set the award aside - another case was where all three were present & heard but two the private meeting with the arbitrator this was held refused to set the award aside - To choosing

- 2 Nov. 485 - an umpire by lot was refused to set the award aside - It was an improper exercise of authority - To which two arbitrators had been chosen & they were & appeared in three. They could not agree

- 2 Nov. 101 - & appointed an umpire - a Chamberlain heard of the umpire since he knew - but his master would do he would give £450

# Contracts

221.

He did so, & all the circumstances then & got the  
arbitration paper to let the matter alone.

When one of the parties upon a new business  
the other entrepreneur he if they would give him time - there  
was sufficient time between this & the making of the award  
He was notified him when the arbitrator & did  
1/2 Nov 25/1 not have his witnesses after agreeing to do it. This  
was done by the C<sup>t</sup> to be in error - His conduct  
was improper -

In another case, one of the parties was sick -  
He did not wish to have the award made without his personal  
presence. The arbitrator, agreed they could wait, as there  
was time enough. They did not however - but made their  
award & the C<sup>t</sup> set it aside -

So here there was one arbitrator a settlement of  
life but regularly been made between the parties for 8 or 10  
years back - one of the parties found that the arbitrator  
was looking over all the previous settlements & requested  
him to forbear, until he could show they were regular  
settlements. He would not - & the C<sup>t</sup> set the award aside -

These bills are often given by the arbitrator, the other  
as well as by the parties, when there is any thing good -  
as when one of the arbitrator talked as if he intended  
to give it as one of the parties. The other & he would have said  
The reply was I don't want to hear any thing I am glad of an opportunity  
to make his representation -

## Contracts - 2d

To a line an award was made by the arbitrators  
 I was not dissatisfied for them to deliver up the award  
 until their fees were paid. The ground the arbitrators  
 took further was of their refusal to pay & the other said  
 it all. The award was made aside on the ground of  
 2<sup>d</sup> Nov 705 - it being a dangerous precedent for the arbitrators  
 to take the fees from my & the parties -

See a very nice case 2<sup>d</sup> Nov 151.  
 10th 77.  
 Every species of fraud in suppressing the truth will  
 be a cause for setting the award aside - but it be-  
 comes hard if it may if this concealment of any  
 circumstances which might in good conscience be  
 disclosed. There is one case where I have set an award  
 aside which I think was void at Law also. A Quaker  
 submitted a dispute for his award. They awarded that  
 he should shut down when he was one page  
 & that the Quaker should give up more that he would convey  
 This is unreasonable & I think would be void at Law  
 I know of no other case where the award have  
 interfered & set aside an award void at Law

Th: finished awards

*[Signature]*

## Contracts

Sect. XXXIX The Action of Debt. Vide Vol

The action of Debt is an action founded on an express contract in which the certainty of the sum appears, & in which the Plff recovers a sum in money or in damage.

The word express here does not mean qualified. It is not meant that Debt will not lie where the terms of the contract are not all expressed, for the terms may be part expressed & the rest implied as in all cases of taking up goods at store. On this ground a tenor may be made to actions where the sum is ascertained by the market price.

In this action you recover for the Debt Debt is all return, for the interest is settled by Law & by judges upon a presumptive damages.

This action lies in cases of simple contracts where the price is fixed, & the price may be fixed with reference to other things.

The old case of Wager of Law was so strict that the action could not be sustained except an ass. It is true these actions are out of use & the action is now on the sum implied the wages of Law drove them out of use. If they should ever be introduced again, I think their expense would not attract them. It is certain they may be brought the assumption is almost universally substituted.



## Contracts

Ex. 135  
140

1 Lark 23-

Now they ought to be mentioned - the Defendant -  
the action is supposed to be in fact by the Defendant  
of the person who made the contract & it is of  
course who comes in collectively to pay it. But this  
gives no action of debt in respect of the acceptor of  
a bill of exchange - it must be left.

2 - Lark 23 is an action on a bond, and in  
this it is mainly speaking the only remedy  
by assumpsit speaking - because there is a case  
where covenant & debt are concurrent in an action  
on a bond - if the condition -

It is not necessary that it should be the condition  
was to be a collateral act. The action is brought  
the bond bond to the bond, the the defendant may  
take advantage of the condition if he keeps &  
then that he has performed it.

In the action on the bond for the penal part  
where there is no difference to be made to the condition.  
It is not strictly speaking true that the penal part  
remains in a man in name - in the old Law was  
you are deceit the penalty & nothing more - But  
now the penal may be changed - there then comes in  
all the question of damages - this is regulated by Stat. The  
penal Law are still observed to be sure, for the court  
which judgment for the penalty & immediately in their  
equitable capacity they commence damages - it -

## Contracts

There you see the Law about presumptive damages  
 is let it be - the general principle upon which a tort  
 person may enter into houses, what are illegal &c  
 There have been cases already under this title

3 There is one species of the action of Debt now on from  
 now to be noticed - This is an action to recover  
rent agreed upon by the parties. Where, perhaps, when  
 made, there was no action to the old Com Law if the Tenant  
 should die the Ex<sup>t</sup> could not recover - The reason  
 given was that he had nothing to do with the freehold  
 or any thing respecting it. But come not the heir  
 to recover? The freehold concerns him - No, then he

4 6th 9m

Little 162.

could do because rent is personal property which the  
 heir has nothing to do with - This was the old Law  
 & altered by Stat Hen 5 - I suppose the Ex<sup>t</sup> can  
 recover in the 16th by force of this Stat. Where there  
 was a lease for years action of Debt always lay  
 to recover the rent There was no freehold in the case  
 it being personal property & the same being certain  
 the Ex<sup>t</sup> could recover it in Debt -

So for a lease at will Debt is the proper action  
 the same being certain. A lease at will now being nothing  
 by the Stat of Quia & perille it has been a question  
 whether the action of Debt will lie on it; in form it  
 certainly will -

It seems to be a principle of the Com Law that Debt  
 will not lie for rent recovering from the tenant's estate

## Contracts

It is now there is no possibility of contract. The Just. of Geo 2<sup>d</sup> gave the action of Debt in such case. I consider it is unnecessary for there and an implied contract that the tenant should stay at the old price & that the landlord should be paid. The Just. may perhaps be proper in one case to keep alive the idea that a contract must be expressed to allow the action of Debt -

I shall, on the subject, have to consider Debt on Bail Bonds & Bonds given in Court. With these are regulated by distinct Statutes. At Com. Law, there was no such thing as taking a Bail Bond - Statutes have regulated it in different ways - but the principle is the same in all - It is to require that when a man is arrested for a debt upon mesne process, the Sheriff instead of carrying him to goal & keeping him in safe custody as the jailer was obliged to do is now obliged to take a Bond - some say with sureties, others with a pot. He is obliged to take it if any body offers of sufficient capacity to pay the Debt otherwise he himself will be liable to the City -

The liability of the Bail is to pay the whole Debt & costs. The officer is to exercise his discretion in taking the Bond - The C<sup>t</sup> will never subject the officer for not taking Bail, unless it is clearly apparent to every body that the Bail is sufficient - This places the officer in a delicate situation - And of it grows an important question when in large towns transacting extensive business were

# Contracts Debt

227.

apparently correct - The officer takes such a man  
as that - If the Bail fails - Is the officer liable to a writ  
of habeas corpus? or a decision in Eng. courts? or in the  
our decisions, that the Sheriff is not liable under these circum-  
stances - provide they were such as exercising a sound discretion  
he was bound to take, Bail

The object of the Bond is to take the Debtor there. The  
consequence of it may be that the Bail will have the money  
in pay - Strictly speaking the Sheriff is to pay it who then  
has his action over of the Bail.

The Eng. have an additional Stat. that the Sheriff may  
assign over the Bail Bond & the Creditor will choose to  
take it to save time sent, provided the officer has done his  
duty - An action will lie on the Bond in Eng. in the  
name of the assignee. In Hon. it has been decided that  
the action must be brought in the name of the Sheriff, officer -  
but here as much as in Eng. the Creditor are obliged to take  
the Bond - the Sheriff need not assign it unless he chooses.

The Eng. Stat. uses the word "surety", have then never had  
been any dispute but that when the word "surety" is used  
on good position is enough - but when the word "surety"  
is made use of, it has been made a question whether two  
ought not to be given - Principle the Bond of the Debtor is  
his security - There must be good security & that has been  
decided to be the meaning of the word surety.

It is said there can be no recovery by the Sheriff upon a Bail Bond  
given by the Debtor - How can this be! To be sure, taking such a  
Bond as this might not to secure the Sheriff from his liability -



## Contracts

But a man is not bound by a contract if he is  
 under duress. The reason is that the law is not  
 willing to enforce a contract in this, or in fact any, case where an  
 undue influence is exerted over the mind of the party. The law is the  
 subject must be followed strictly. The law says duress  
 must be given. If the bond of the debtor is clearly not  
 a security or security. The provision being a Stat one  
 makes the difference. On the same ground it has been  
 held that if a man B, to Henry Thp. I come in &  
 say "I will be a bondman - I will be it before these witnesses  
 one day 172. I am in a hurry, you need not take a bond." No recovery  
 can be had in the case, because the provisions of the  
 Stat. are not followed. This rule applies to mere process  
 only. The object of the bond is only to compel the  
 appearance of the debtor; if he appears, well, if not, in  
 the eye of the law the Bail are bound to pay the debt.  
What then is an appearance? The intention  
 of the law is to appear on the day of the return of the  
 writ. The intention of the law was to place the creditor  
 in just as good a situation as he would have been had  
 no bond been given - on this ground the Ct have enforced  
 the construction of the word appearance very far - Suppose  
 then he does not appear on the first day? Is the bond forfeited  
 No, if the judgment is not rendered on the day - If he is then  
 in the custody of the Ct at the time judgment is rendered the Bail  
 is paid. This was the first step. —

But we have gone farther. He does not appear when judgement is entered. Execution is taken out & during the life of the execution he surrenders himself to the officer. Is the Bail saved? yes. The creditor is in as good a situation now as he was before the Bail was taken. He could only have lost his body then. He has it now.

But this is not all - the Sheriff is bound to look him up - & the moment a faid non est is made. Then & no, before the rights of creditors and the Bondsmen attach themselves, & they can recover of them Debt & costs.

In this case the creditor is bound to return after the return is brought in the house if they will bring their Debtor in & pay the debt upon the second writ, they are discharged. I know of no such Statute in the 11 Statute.

But suppose the Debtor did appear upon the return day what becomes of him? Must he go to gaol? or is he to give a bond to the creditor, specially in the nature of the other - circumstances then. He will appear before the Court at the time of the judgement & his recognisance before the Clerk of the Court.

This Bond has the same construction as the other bond. Scire facias however is often used upon it too. Debt, because this acknowledgement before the Clerk is considered in the nature of a judgement of Court in scire facias they cannot arrest the body.

There is another Bond & that a common one, where one takes out a writ & sues. The reason is to secure the Defendant's costs if he succeeds in the suit. This He should have upon

## Real Contracts

from present & still the same for whom & for the  
 same reasons as in the case of a deposit. I suppose however  
 outside of the state regulations. The same Law  
 governs nothing of it.

The object of this Bond is the payment of costs, provided  
 the Plaintiff sues - But suppose he should no longer  
 sue as the bondsmen. The exon is to issue as to  
 the Plaintiff & before the bondsmen can be sued the exon  
 must be returned with a non est. Now you will observe  
 as it is but the provision for the object of taking the Bond  
 will be wholly defeated as to the estate & this will  
 secure the liability of the Bondsmen.

In the eastern states, we have a Law with respect  
 to execution costs, arising out of our attachment Law.  
 In New England you may attach property instead of  
 the person: Indeed the party may screen his body from  
 arrest by turning out property enough - Now if the  
 Debtor will give Bond that his debt shall be paid on property  
 to be coming in that case the property shall all be restored to the  
 Debtor - Now the Creditor is as well off as if he had taken  
 the property - Now suppose I know J. D. £100 - The Plaintiff  
 takes the Debtor has only one house to lay upon - & seizes  
 the house - I secure judgement for the £100 of J. D. but he can  
 get nothing out of him - now as he comes upon C for the £100  
 on the value of the house - If you say he can recover the whole £100  
 you subject the poor man to great difficulty, because he can seldom

# Contracts & Act

231.

get security & in this way a man may claim £100 a year he is not content to one hundred pence - I believe the construction might be this. The principle is that the man might be in as good a situation as he was before & so better - Now how much can I receive? - This is the value of the horse £20 - Now shall I be placed in a better situation by getting the whole £100 out of the horseman? No, he ought to have only the £20 secured by the horse & then he will be in as good a situation as he was before - This principle will apply to all bonds whatsoever.

Section XI. There is likewise an action of Debt for breach of judgment. (an after judgement is obtained execution may be taken out in ordinary cases) Thus never appears from Fitz. N.B. did take out Debt on judgement until a year & 6 days because the time limited for taking out an Excon. This is not the case now. The time above is the time now limited for taking out writs by the Con. Law. But as to the rule above, it does not now exist. The objection is made, why should you take out Debt when you can take out an Excon. There is some reason in the objection - But on the other hand it may be said you have a judgement of Debt it ought to be satisfied.

400 206 -  
s. Bar. 539.  
Dev. 92  
sup. 72 - One thing is agreed on, on all hands, if you cannot reach the man or his property by Excon, i.e. if you cannot get the benefit of your excon, you may sue in Debt before the time limited has expired - The Con. we have no time limited to take out an excon - It is left to the discretion of the Clerk & it has been a rec<sup>d</sup> opinion that if we could get



D.M.

## Contracts

an action we could not see an Exon or Judgment to be true & it was always true that if we could not have the same benefit from an Exon as from Judgment, we might bring the latter - but a new principle has been introduced that you may receive interest upon any Exon or Judgment - formerly C. would not grant interest on Exons -

In this action of Judgment, there is no possible defence back of the Judgment - you cannot go into an enquiry as to the merits of the Judgment - But there is an exception where the Judgment was obtained by mere force - This is however no exception you may be then go into an enquiry as to the Judgment in this case but it is on the ground that there is no Judgment in this case.

But you cannot show that the original contract was void or corruptible for the Judgment is conclusive evidence of a Debt against all the world - Any matter posterior however may be proved on a review, discharge &c.

Upon strict Eng. principles it would be difficult to set up the defence of accus & satisfaction, unless in writing, which is a high nature in the Judgment itself. This does not obtain with us, as you have been told -

A discharge by setting the Debt out of goal may be set up by the Exon - The reason has not much in it - But if the man is taken in Exon & permitted to go out by the Mf. he never can be taken again on that Exon & that it is a defence to an action on the Judgment - One thing is clear. If the Mf

501.2. no obligation he may let him go & then sue him upon it. If he cannot he sue on the judgment as well as on the new obligation. The reason was this. When the Pff let him go, it was a voluntary escape & a breach of the man as ag<sup>t</sup> the Pff. This is perfectly reasonable & sound policy. The officer should not be tempted to violate his trust. he may say, that the Pff himself has been guilty of a voluntary escape. What crime is that? Is it a breach of trust in him as in the Pff, who he has done nothing wrong why then on principles of justice prevent the Pff from recovering? There is no reason in it. It is not founded in principle, the rule is established. It is also said that when you have let him go the presumption is that

Ans 62. He has paid the Debt about the presumption: but  
 Ann 2483. what does it avail - Can it not be a matter? Why not?

Let 236. Turn the burden of proof if you please on the Pff but let him prove the fact if he can. This I say, he is discharged without a satisfaction & ought to be shown to be such. The technical meaning of a discharge is a writing purporting to be an acquittal from such a demand for & in consideration of it.

(Debt on foreign judgment) This is a very common remark. We do not stand on the same ground as we are. It is true Debts will lie on them. The judgment is *prima facie* evidence of Debt but not conclusive. The cause of action & the merits of these judgments may be inquired into.

The English common law places in the respect to  
contracts in England as any other foreign law.

The foreign judgment, past to establish the right of  
a bond of Debt, & a recovery will be had, unless it  
can be shown that the judgment ought not to have  
been given.

In this, the law is not the same as the  
Law is in the U. S. Some states have considered that the  
consideration requires that a judgment in one state  
ought to be as conclusive evidence of Debt in another  
as tho it were rendered in their own. A decision to  
the contrary in New York. This decision is unfortunate.

We now make remarks with respect to the extent of  
Bonds or conditions as it respects persons, i.e. who may  
make themselves of the condition. A Bond was given  
to A. his executor or to it alone & that included his Executors  
that a Clerk should be faithful as a Clerk in a store -  
Borrow the Clerk & C gave the Bond. Now the question arose -  
as long as A lived the Clerk was faithful after A's death  
the Clerk carried on the business in his own name - afterwards  
the Clerk embezzled money & the Ex<sup>r</sup> brought an action on  
the Bond. The question was whether he could recover?  
Clearly not - The executor acted in his own individual  
capacity & the bond was not given to him in that capacity.

again. A & B were partners in a firm, C was paid a Clerk &  
was bound for his faithfulness - afterwards C came in as partner. They  
all sued on the Bond over A's debt. The bond was given only to A & B for  
for embezzling partnership effects. None was a Clerk of the

3 F. 287

3 Mills 300-

Bond & mortgage debts of all the partners. The C's estate -  
it was not a breach. I think the decision wrong, for the  
Debt certainly was under the year of A & B.

In similar case, except instead of giving the Bond to  
15R 332 the Bond, a Bond was given to Exr that C should be  
or 292 faithful in the Country House. C became a partner & they  
as before on the Bond & the action was sustained.

It is a known principle of the Com. Law that on a mere  
personal contract in which the Heir is not named, no  
action can be brought up the Heir. I promise for him off  
his Heir &c. The Heir is not liable on it. The promise must  
be a pled to bind the Heir where he is named.

These principles of the Com. Law are very much altered in  
our Country. In Com. I know of no such thing as suing the Heir  
as such in any personal contract. The reason is obvious -  
In Eng. the real property descends to the Heir, while the  
personal property goes to the Exr. Here then it is reasonable  
that the Heir should be liable as well as the Exr - In Com  
the Exr is the contract of the debt as well as of the personal  
property. The Heir has not a good if occurs which may not  
be taken if the personal property will not pay the Debt -

Thus in such a case as the following, it is to pay but not  
as Heir - A man gives a bond payable 5 years hence & dies.  
It could not be sued under 5 years - His Exr could not be sued  
for the time had not expired, & before this the Exr had settled up  
all the Debts, distributed the estate & became a Bankrupt -  
Here then to have an effectual remedy the Heir might



to be liable because the maxim of law is that creditors  
shall always be preferred to volunteers. Perhaps the  
application would be made to the court, but clearly an  
action of Law might be preferred - who then are to be  
heard? all the volunteers? yes, if you please, recover it  
out of one, & then he may control a distribution -

The action of Debt will respect rent & rescue & unpaid  
The Law on this subject has something to say in itself -  
The action of Debt will be where A rents land to B & assigns  
an annual rent. The sum is certain & this is the highest  
action, I know of no other that is ever brought -

But suppose B the assignee assigns over his lease to C -  
you can demand the rent of C & sue him for it? And  
if he does is it a discharge to B the assignor? This is a case  
where B does not reserve the rent to himself, for if he  
does the action may be brought by B. B never can by an  
assignment of his own discharge himself & yet C can be  
sued by A - He is liable on the ground of privity of contract  
& C is liable on the ground of enjoyment. Of course there  
need not be an express contract to sustain the action of Debt.  
If A once accepts & assigns his Debt, i.e. accepts rent from  
him, he by this act discharges B from his liability, but C  
need not do it - When he accepts rent from C he implicitly  
discharges B from his liability - But C assigns his lease to D -  
now is C any longer liable to A because there is no privity of  
contract & no enjoyment. D becomes liable & C remains so -

3 Co. 22 -

2 Str. 1221.

1 H. L. 808/1 -

no error. 75  
Co. 24-

B the lessor for years dies - His Ex<sup>r</sup> then becomes liable to pay the rent - but if the Ex<sup>r</sup> assigns the lease, he is discharged & becomes no more liable - I do not see the wisdom of this. B was certainly liable if he had assigned. Why not his Ex<sup>r</sup> if he assigns? His turning over the lease, to a person with whom he never made a contract & who may perhaps be an indiscreet man yet this could make no difference - But when we look on the other side, & cease to B for 40 yrs. paying annual rent. & then sells his reversion to C. Who has the right of action agt B? I do not here suppose that A has reserved the rent to himself. He ceases to have any right, the lease is a privity of contract - This subject is not on - but it is incident to the question & goes along with it. The annual rent is sold together with the reversion & then is entitled to the action of Debt agt B the lessee.

Another question has been raised - A ceases to B for 40 yrs. & pays annual rent. & assigns the reversion to C, he then is to sue for the rent. After this is done B assigns his lease to D - Now the question is can C have an action of Debt agt D the assignee? C cannot have it agt B. I know of no reason why he cannot in this case, but the Books say he cannot - He certainly can have an action of some kind -

The rent may be separated from the reversion but when not done it passes with it - If the lessee does not sell the reversion but the rent to C - C may bring an action in his own name for the rent & A cannot do it -

# Debt Contracts

If L. has done 17th Service might bring the action  
 By this you are not to understand that it follows  
 of course that if B. brings the case & may have an action  
 19th 405- ag<sup>t</sup> C. for B. may reserve the suit to himself & can pay  
 it to nobody else - it must have his action ag<sup>t</sup> B.

## Lect. XII.

The action of Debt & Damages is the proper  
 action to recover money out of an officer who has  
 collected it for the P<sup>ty</sup>. There might be an express contract  
 but it is not generally the case. This would be no Insurance  
 20th 41- Suppose the action of Debt. It is far from being true  
 that there must be any contract whatever to support  
 the action.

The action of Debt is a proper remedy, (the  
 contract with nothing) ag<sup>t</sup> the keeper of a goal when  
 there has been an escape - This is not the action  
 of an ancient H<sup>ty</sup>. At Com. Law there was a remedy  
 in civil nature ag<sup>t</sup> the P<sup>ty</sup>. But the law in the books  
 that you may sue him in an action on the case at Com.  
 Law for the escape. But I find no such remedy at Com. Law.  
 It was an offence in the P<sup>ty</sup> who was punished criminally  
 at that time, & was giving an action in a particular  
 case, & that of an accountant who was supposed to escape. It was  
 afterwards extended to the Marshal of a particular Prison  
 that of the City of London, & this was the action of Debt, afterwards  
 it was extended by the Statute, in equity & spirit of the Statute to all prisoners

# Contracts - Debt 239

& thus the born Law grew up - This was done before  
 the immigration of our ancestors & they came here with the  
 idea that the Law was British in Debt & thus it became the born  
 Law in this Country, tho' it was not in Eng. for it grew out  
 of the Stat. In this action the whole sum is recoverable  
 this is an action for the purpose of deciding a disputed question  
 viz, whether if you bring an action on the case instead  
 of Debt you can recover the whole sum or as much as the  
 Jury think the damages are? It is so that from the very  
 nature of the action of case you recover the damages as  
 they be they more or less - This to be sure is the general  
 character of the action - but it is not always so, for if you  
 bring case for a Horse sold for £20 you recover the same  
 as if you had brought Debt. I suppose that the true  
 rule ought to be, that whenever a certain sum is made  
 recoverable by Law in one certain case by one action  
 if you bring a concurrent action for the same thing  
 you are to recover the same sum. The form of the action  
 ought not to make any difference. If the Law has fixed the  
 sum, whatever the form of the action is you ought to  
 recover the sum. This point has been much disputed &  
 the decisions in born are contradictory - In a late case  
 in Eng. it is decided that in the action of Case the Jury

pp  
 Walker vs.  
 Somerville





## Contracts

can give full damages, contrary to my idea before expressed. The Court after the process that the action on the case lay at law and afterwards when the Statute was made of 12th (1) it was a difference. About if the first motion was correct the decision was correct, but case did not lie at law. I therefore I consider the decision wrong. They suppose a man at law may recover £10 for a certain injury done before his time afterwards a Statute he may have £20 more if he loses the case & recovers his damages at law. He can recover only £10. This I consider happily correct, but the com. Law gave no remedy in this case, as is evident from this fact, the action on the case is given as a Statute subsequent to the one giving the action of Debt. It was made by the same legislators but 6 months subsequent to the action of Debt.

2 Pl. R 1048.

For. 1048.

It makes no difference whether the action is a tort or a contract or negligent. The rule is the same with respecting the action of Debt.

2 Pl. R 153

With respect to the measure of damages in a tort or an action of Debt it is a general rule. There is a distinction taken between a single Bonefracture at several times & when it is done with a conviction to pay as much as for instance suppose I give a Bill the "I at command for myself to pay £100 in the

# Contracts

244.

some following. I do on the 1<sup>st</sup> day of Dec 1891 pay £200 at five successive periods - How often are you to pay? We don't pay on the 1<sup>st</sup> Jan<sup>y</sup> or 1<sup>st</sup> Aug<sup>y</sup> -

Exon. I gave a Bond to B. on common form for £100 with this condition that if I pay by the 1<sup>st</sup> Jan<sup>y</sup> £20 1<sup>st</sup> Aug<sup>y</sup> £20 &c then this was to be null & void, other wise &c In this case there is a forfeiture of the Bond unless the 1<sup>st</sup> £20 be paid at the stipulated time - This distinguishes it from the first - for on November there is no distinction to be made between them - The Form of the instrument makes the difference -

In the case now the Bond is forfeited & may be true if £20 is not paid on the 1<sup>st</sup> Jan<sup>y</sup> - If it is then you recover the whole sum & contract is discharged - How will they choose it? May they will give only the £20 due not the £100 specified in the condition - What suppose he won't pay on the first day? The long rule is not to suffer Exon to issue for more than £20 - the thing give judgement for the whole £100 & stay exon until all is paid £20 instalments -

In con. to get exon some species is granted & that is the only way / from the C<sup>t</sup> This is preferable to the long rule because before Jan 1 & Aug the business may have been settled & it does not leave it to the discretion of the Clerk to issue exon or not.

But A.P.

188-

In the Court instance stated once there can be no action until the whole time has elapsed. The affidavit is a single bond in this Court only —

The manner in which your right of recovery is to be substantiated by evidence. In these instruments the law sometimes requires witnesses or testimony and you are obliged to substantiate your claim by introducing the subscribing witnesses. This is a general but not universal rule. The principle on which this goes is that the subscribing witnesses are supposed to be better witnesses than mere speculation. They are called in expressly for the purpose & you are to introduce the facts and once you have —

But if you can show that the subscribing witnesses could not be found — you may introduce their affidavits. I find no rule as to when they cannot be produced. They have disputes with subscribing witnesses when they have gone to Scotland or to France but not when they were in Eng. except in one instance where the person was a prisoner in York Prison for they cannot take deposition in Eng. in civil cases, this is on the ground of his being out of the reach of process — on this principle if a man had gone out of town his presence would be dispensed with.

But suppose the testimony of the subscribing witnesses is not conclusive. May the party then introduce other

*Contract of Mr. Reed.*

Lang.  
Captain vs  
Mumson

after them to prove it. There is one remarkable case of a Will where the subscribing witnesses all swore to the insanity of the Testator. Then they introduced other witnesses to prove that he was sane. The testimony was satisfactory that the man was sane & it found contrary to the testimony of the subscribing witnesses.

When the subscribing witnesses are dead?

Then you may certainly introduce other witnesses — but there are no other. How then are you to prove the execution of the instrument? The Law does not require subscribing witnesses, you have nothing to do with them — you have nothing to do but to prove the execution of the instrument & that by

20th. 48- proving the hand writing of the maker. If there are subscribing witnesses & the Law does not require them, you need not prove their hand writing — if the Law does require them, you have two things to prove: first the hand writing of the subscribing witness & the hand writing of the maker —

It is not necessary to prove that any have seen the subscribing witnesses die — It depends upon report only.

No. 834 The proof in this case is not so nice as in many other all the circumstances of the report must be taken together.

If the subscribing witness has become infamous it depends upon the same principles as were before laid down. If the subscribing witness was required by No. 834 Law, you must prove his hand — If he was not, you need not do it —



# INDEMNITY CONTRACTS

In case of two several obligors when you may  
 be only one of them if you live, if you have no  
 other pros/ can you call upon the obligor not so  
 to testify: Suppose each has given a Bond separately  
 would not one be a good witness of the other? Yes  
 Well who if he is joined in the same instrument can  
 make any difference? He is a good witness. His  
 interest is equal for if he recovers up on the  
 Bond his action will be the other obligor not  
 joining in the suit.

When you recover on a Bond Bonds you do not  
 recover the sum of the fine. The £100 & costs are the  
 measure of damages.

a contract to be on a Bond with such a day,  
 is not good law to act on the Bond, but if an  
 act is broken the contract is recoverable as for a breach of it.

If the contract is not the right to sue for one day then action of Covenant is founded upon an agreement  
 on time the right would  
 be there gone for a year which has been entered into by deed & so the under seal  
 bond is not once recovered

if there is a bond on a day it is not proper use it is a contract. There need not  
 be a joint action  
 in any case of the bond  
 to be a bond the  
 contract is part of the  
 same because the whole  
 is taken together. When there is any agreement entered into in writing  
 or the bond cannot  
 be used until the  
 day is broken.

only one executor if I get executors on both if it is  
 accepted it is the covenant of both; & for a breach of it  
 is to be broken.

in the action of Covenant & such lie - the lease & back are  
 not the price of a  
 Bond or release - the & l. covenant to pay rent - Now if I only execute it, but  
 do not accept it I am bound by it to perform his covenant

# Contracts - Leases

245

ante m. 2

T. 144. 7

R. 170

Subd. 45. 240

Contracts in the lease, & the covenant of both  
Covenants are not as are dictated in the contract

But there are Covenants implied by Law - a man who enters a lease there is an implied covenant that he is the owner

4\*

160. 80 - If the Land & if he is not, it is a breach of the covenant

not not to for which an action will lie

execute a legal In covenant there is no form of words necessary -

in a proper technical word as in many other instruments, a

notice is void. Covenants of lease & - Covenants with respect to

not to me

neighbour country is this are provided on the broadest principles of equity -

can be suit in

neighbour country

can be recovered

the leasehold

160. 80. 399. To where the lease says in the lease the lease shall

in country in a

is not to be a lease

160. 80. 399. The words however must in part an agreement

in covenants not to me they must not easily imply something else -

not a day & that of the

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

the lease shall be void

160. 80 -

But the 98 -

the 114.

the 114.

the 114.

## Covenant Contracts

One then further - A covenant is not void which refers to some preceding instrument the words of the latter are not subject to construction much more than the words of the latter instrument but the reference must be to the

A man marries a woman who has four children - A B C D. Her former husband had left a will in which he has given £1000 to A B C D but none to E in the will. He has left all his property to his wife to be distributed to the children when they come of age. His wife dies again & makes the trustee of the children enter into a bond to pay the legacies then "upon A B C & D's coming of age I will pay them £100 each according to the will of the father." Now by the covenant was he

2 Kent 40. bound to pay £1000 to E? The wife said nothing about it -

The rule is the covenant is limited by the preceding instrument to which it has a reference. & therefore he cannot bound E for £1000 - Where a deed is made void & there are covenants contained in it also void as to the principal object it has been

1 R 271. continued that the person is bound by the covenant. A sells to B Blackacre which is in the possession of C who claims it. This C cannot do, he is forbidden by Law & now is A bound by the covenant in the deed that he is well served re? I find no case where an instrument is void as to the principal object that is not void as to covenants also -

LECT. XLII. It is frequently said down in the law, *alibi dicitur* that covenants, or Bonds with conditions, which amount to the same thing to do a thing which becomes impossible by subsequent events & that impossibility arises from the act of God the party is not bound to perform them. The Bond is voided - & yet there are cases where they are the hazard of this - It is then of some consequence to point out if there be a distinction, notice in the case -

The position is not a general one. The case will not warrant it. The truth is, all these cases are where the man himself would not have been in a worse situation by discharging the Bond than by its never having been entered into. Thus I arrest John of Geneva, Bail for him - & the King's Counsel v. A & discharge 1 per. Because there is no sense of them if he be never taken the Bond is voided.

In all cases where the excuse is absolute, the party is in no better situation by taking the Bond than if it had never been taken -

But suppose the freighters of a ship enter into a covenant that they will be at Charleston at such a time & take a load of cotton - By an absolute impossibility they

2 Nov. 1837. are not at Charleston by the time. They are not discharged from the covenant & this with good reason for if there is any damage accruing by reason of the non-performance an action lies.

It is likewise a general rule that a covenant to do a thing is not to do what is lawful, if afterwards the thing becomes unlawful, it is a release or discharge of the covenant.

Even if prevented by any lateral matter -



It is a State which is impossible to be performed - this can you discharge - with 198

But if I, say, have been made to do the thing, the  
 person who may be required back again, the  
 person being totally fitted

To suppose a man enters into a negative covenant  
 not to do a lawful thing, & a free owner compelling him  
 constitution of the State to do it. This is a breach of the covenant  
 large as there shall be made  
 in giving the obligation of  
 the State is on himself  
 the intention of the parties at the time of entering into  
 the contract is to  
 contract himself, after, then are negative. Thus a lease covenants with  
 act of God often infringe  
 a small contract - a lease that he will leave all the trees in a certain grove.  
 they are not a covenant  
 to make with a man  
 to have the trees made off  
 before the year is over -  
 the covenant? yes, the he had before made it literally -

J R 464 - So where one man covenants with another for all  
 the grain in his house. The grain was injured by  
 fire, & he sold the house  
 this is a breach of the covenant  
 entered at the time of making  
 the contract of the same kind  
 1 Geo. 2. 11 Geo. 3.  
 1 Geo. 4. 2 Geo. 3. 377

1. Geo. 4. 377

the law, obtains judgment - then declares it up -  
 then he is guilty of a breach by obtaining a  
 judgment upon it! The 1<sup>st</sup> he has -

Covenants are divided into two classes. In the  
 ordinary consequences, where there are two covenants -  
 1<sup>st</sup> the covenant of warranty. 2<sup>d</sup> The covenant of seizin. If  
 the seller was not seised, this covenant is broken as soon as made  
 he makes possession immediately, altho he goes into possession.  
 But the covenant of warranty is never broken until  
eviction. The nature of the two covenants is very different

## Contracts - Covenant 249

The covenant of seizen goes to the Grantee because damages only are recovered for a breach of it. The covenant of warranty goes to the lessor, & the lessor, the action on it lies to the lessor, the assignee brings the action.

This covenant always goes with the Land, & if there are several assignees, any one of them may be sued, or the first seller. The remedy is then stronger. But the covenant of seizen is different, for it is broken immediately & damages only are recovered for a breach of it.

This is a common thing when a man is sued on a covenant & warranty to touch in his immediate warrantor. The effect of it is this. If the last assignee is served with a writ of ejectment, he vouches his last assignor to come in & defend. Now if he is ejected, he can bring his action of the warrantor & there can be no defence made by him whatever. The judgment of the court shall be conclusive evidence of a right of recovery. If he has vouches D, the judgment would not have been conclusive, for D might have proved title if he could, when sued by C. The good effect of a voucher then is this. If you lose your Land you can certainly be vindicated.

This voucher is generally a written notice signed by a magistrate. I don't know that this is necessary. I suppose parol notice would be sufficient. The former is more easily proved.

The implied warranty contained in 'give grant & receive' does not in it itself contain a covenant of warranty, but a covenant of seizen.

Holt 35-

1 Hb. 100.

See Price 213

In all these covenants of warranty of a latent kind there is no breach provided the ~~inhabitation~~ arises from the tortious act of a 3<sup>d</sup> person. The covenants, as all the legal cases of third persons, but not their tortious acts. Hence he may covenant w<sup>th</sup> them if he pleases - To be sure if the grantor himself commits the tortious act the covenant would extend to it -

(Hence a covenant to save harmless is of the same nature as a covenant of quiet enjoyment It does not extend to the tortious acts of third persons. There is a common covenant in a lease that the lessee may come & after to repair & to leave the house in as good plight as when he enters it - What is the meaning of this? A complaint that the house has not left it in as good repair - Here what is the difficulty? Why nothing only the house has grown old - The covenant does not extend to this it never extends to the ordinary wear of time -

3 Leo 264

2 Vent 126

The condition of a special covenant to repair the building is to repair all with those built before & those after the lease

There has been a question of this kind once decided but I think not settled. The lessor covenants to repair & does not, can the lessee repair & charge it? It has been decided that he might repair & deduct it from the rent. He might if there was any provision of Law

La R 420.

for it. I do not now think the case decided not Law -

## CONTRACTS <sup>251.</sup> Covenant

A few observations upon covenants, rec'd by penalties  
This is often done. Out of the instrument arises an election  
of remedies, either an action on the covenant, or an action  
for the penalty. The two actions are totally distinct, they have  
no connexion with each other, because if he brings an action  
upon the covenant & his damages are greater than the  
penalty he may recover them. But if he brings Debt  
for the penalty he can recover no more -

1/ Bun 2225

If the penalty is really greater than the damages  
it is open for examination in the Ct. (Chanc) & in  
this respect like all other penalties. If he recovers on the  
penalty he cannot resort to his action on the covenant -

Now what is a penalty in these cases is the only question  
It is in the nature of reserved damages, it can be chanc'd  
if it is merely a penalty, it may be gone. This is always open

Bun. 2228 to examination - you must take into consideration the  
nature of the thing, the sum &c -

Covenants with respect to the time of performance  
are of three kinds & the Law respecting each is somewhat  
different - 1<sup>st</sup> The first kind are those which are mutual  
& independent. These are cases where there is no considera-  
tion for the covenant except the covenant of the other - the  
non-performance of the one, is no defence to the other -

Each one may sue when the covenant is not performed

La R 124 The damages may be greater in one case than in the other  
L Paines 155 If one covenant is affirmative & the other negative & the former



18th 41.

is in consideration of the other, it is 3<sup>rd</sup> they are always mutual & independent. (2<sup>nd</sup>) When the performance of one covenant is in consideration of the other covenant - In this case agreement must be made when B dies. The only difficulty is to determine whether the covenant is of this nature or not. It depends entirely upon the mode of expression -

1 Fr. 535.

There was a case of considerable difficulty. The words were these - A covenants with B to transfer a tract of land in a Bank or or before such a day. B covenants in consideration of the premises to pay so much. Now what were the premises? Was it the covenant to transfer - or the transfer itself? B bleas non performance. The Ct. 3<sup>d</sup> it was in consideration of the covenant to transfer -

1 Rev. 245

1 May 665

The terms of the contract may denote a necessary before-  
-ance on one part & yet the whole terms of the agreement may show the contrary. In this case we are to look at the whole of the contract - (3<sup>rd</sup>) Covenants that appear from the whole taken together to be performed at one & the same time. What must be done to reverse? If nothing is done on either side, it is a determination of the covenant. But if one takes the money, or the other takes the deed then an action may be brought -

Covenants as they respect the assignees of a lessee. A leases to B & B assigns his lease to C - then by what covenant contained in the lease is C bound to A? He is sometimes bound by some - all - & none at all -

The rule is, what covenants A enters into which are in esse or create at the time of the covenant he is bound to perform - whether B covenanted for assigns or not - If they are not in esse the rule is, if assigns are named he is bound to perform them if they respect the premises. again - he is never bound to perform those which do not respect the premises whether assigns are named or not - one thing further - If the breach is complete before the assignment, the assignee is not liable for the liability, is presumed on his enjoyment of the land, he did not enjoy at the time of the breach - he is bound the assignee must be the assignee of the whole term.

Co. 11

Pl. 351

Br. 12/11

**Section XLIII.** In the case of a covenant, if B assigns to C he accepts what he, A may still maintain an action of covenant broken. The assignee is not liable for anything arising afterwards in covenant any more than in debt after Shaw, 340. He assigns - all the doctrine of a right of action against those with whom the covenant is not made, on the footing of assignment is applicable only in cases of real property, <sup>and to</sup> the assignee of personal property. The house can look only to the land on the other hand the assignee of real property has a right of action against all the covenants of the land that run with the same as covenants of warranties, quiet enjoyment &c - Covenants merely personal or heir do not go with the land. But covenants that run with the land go to the heir, or assignee & never to the heir: a right of way or to drain a ditch run with the land & go to all who come in by operation of law, as well to assignee, or tenants in dower, &c, &c -

in Dec. 309.

Co. Br. 418.

1 Pl. 81.

Shaw, 340.

3 Br. 17-

Br. 92.

## Contracts

Account. vide title "Acc." Vol. 2.

The action has gone very much into disuse - in Eng. But is much in use in some parts of the U. S. & disuse in others. I have seen but one action of assumpsit for a century. all the proceedings in assumpsit are in disuse in Eng.

The modes of proceeding in the action of assumpsit are different in different places. They are regulated by Statute. But there are some general principles which operate in all cases -

as in Rem assumpsit may be tried. This is the action tried by a ward assumpsit Guardian. This is to call him to an assumpsit for the property he has had of the ward in his hands -

It is also assumpsit under the character of Bailiff. There is now no difference between a large assumpsit Bailiff & assumpsit receiver. The forms of all our writs are assumpsit. The Bailiff is one who has care & custody - So he is one who receives property of another to sell - Under this character is the case of Merchants in Geo. if one has rec<sup>d</sup> more than another to which he is not entitled -

In all these cases there is a privity either express or implied by Law. Where there is no privity there can be no assumpsit. In the case of Guardians, the privity is implied by Law.

Every tortious taking of property excludes the idea of the action of life - but a minor may if he pleases bring a life ag<sup>t</sup> one who has entered tortiously upon his Estate instead of treating him as a disseisor. This is an insolent case & the only exception to the rule.

In an action of life there are two judgements - The action is but stating that the other was B<sup>id</sup>iff & claims that he ought to a life & demands of him to release his life. If it is found that he was B<sup>id</sup>iff & a decision judgement pass & cause ag<sup>t</sup> the Def<sup>t</sup> that he a life. After this judgement is rendered the trial is by auditors & they go into an enquiry & as they find their report to the Ct<sup>l</sup> they award so much as they find & Exor. issues for that sum as much as upon record. The auditors are appointed by the Ct<sup>l</sup>.

The final judgement is not rendered until the report of the auditors is made. But suppose the Def<sup>t</sup> will not come before the auditors. They may then give the P<sup>ff</sup> his whole demand.

In this case the parties may be examined on oath. The Def<sup>t</sup> has this right & ~~so~~ has the P<sup>ff</sup> of any thing in his private knowledge - Any thing that will excuse a man from paying is good accounting - As if the goods are destroyed by any accident for which he is not liable as throwing them overboard in a storm.

The first judgement is always quod computat ag<sup>t</sup> the Def<sup>t</sup> & no other judgement in the first instance can be rendered ag<sup>t</sup> him.



This action of life is not like many other remedies which can be made up by other remedies - When articles are agreed - must be entered into to life - an action of life has as well as an action of covenant broken, founded on the articles -

This is not rarely the case / a Guardian where the Law has entered the trust but other reasons as trustees & sometimes Ex<sup>rs</sup> who are to pay Legacies -

The action of life by the tenants is common where one takes all the profits - This has been extended to joint tenants & coparceners. At Com Law the Ex<sup>r</sup> of a tenant in common would not bring life - but by Stat. he can the Ex<sup>r</sup> of one Merchant & could always call the surviving Merchant to life - In the action Ex<sup>r</sup> of a man calling him to life if Ex<sup>r</sup> of a Canadian he must come in & life if he was Guardian - To life there is no general issue except never had life & accion, & under the general issue there is no trial had of any point material to the merits of the case - The Def<sup>t</sup> may plead some things in Bar as he ought not to life - anything that admits that he was once accountable but that he is not now, as a discharge, or a settlement under the hand of the claimant or that he has already fully accounted -

Week - 73 - case for action of life -

The plea must be either the general issue or some matter in Bar. If you are ver able to life - if you have not judgement of quod Computat, it must be thorced -

Before auditors you can never plead that you was not Bailiff & receiver for the Jurymen determining that you were. you can't show that you have heretofore accounted - No you must go on the ground that you are Bailiff & receiver, for it is an established rule that what you could avoid yourself of before the C<sup>t</sup> you can't avoid yourself of before the auditors.

### Widita Querela.

This is intended as a remedy when a man has judgement ag<sup>t</sup> him & C<sup>t</sup> is gone out & he is not liable on it. It is not a writ that issues of course. The object of it is to relieve ag<sup>t</sup> an Excon with which he is unjustly oppressed. The magistrate who issues the writ must have at least an ex parte hearing before he issues it. Some probable grounds of evidence must be exhibited to the magistrate - In some by some means or other the Chief Judge of the C<sup>t</sup> signs the writ - perhaps they may do it - In Eng. it has become the business of the C<sup>t</sup> of the C<sup>t</sup> whether the Judge of the H<sup>c</sup> can or not I do not know - The effect of his writ is powerful. as soon as the officer has notice of it he must deliver the man out of goal & return his goods - The Excon is in fact completely stopped - A bond is given with the writ which gives all the other of sureties; if the person should not prevail on the audita querela the Bond may be used for a recovery of the Debt Costs & all damages. The Bond must be with surety.

This widita querela is an action also. The man perhaps ought not to pay the Excon. The Off<sup>r</sup> in the Excon knows it. He may recover damages on the audita querela as he could have done, but he lost an action at Com Law for them -

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C H

# Bailment

*Lectures I.* Bailment is a delivery of goods upon a contract express or implied that they shall be returned to the Bailor or delivered to his direction.

Jones 11. 348 - when the goods for a week they are delivered shall be annexed - Thus if A is going to deliver goods to B, this is a Bailment. There is an express or implied contract that they shall be redelivered to A when he returns or according to his directions. Taken goods are delivered to a Taylor. Here is a Bailment & a contract implied that they shall be returned precisely more.

There is no title so short & simple as this, in which there have been so many contradictory opinions, & dicta - But in general the decisions have usually conformed pretty nearly to what seems to be the true principle - The treatise of Sir 11<sup>th</sup> Jones & the opinion of Sir Hold in the case of Gage & Bernard reported in Ed R<sup>d</sup> appear to be the only sources of knowledge on this subject.

I would observe that every Bailment creates a qualified property in the Bailor - this I observe there is a case reported by Ed Coke in which he distinguishes between Bailment & other Bailment inasmuch as the former had a property in the goods & the latter had not. But there is no such distinction - It is a mere distinction not supported by authority or principle - True the Bailment from the nature of the Bailment has a stronger interest than other Bailment. But it is a settled & indisputable point of Law that every lawful possession constitutes a special property - The mere Bailor a Dependant, has the lawful possession & such a property as the Law will



protect as<sup>t</sup> the whole world, except the Bailor - but  
it is judicially settled that the finder of goods may maintain  
Trove as<sup>t</sup> any one who takes them away. But this he can not  
do unless he had a special property - There is the no foundation  
in the distinction that a Trover differs in this respect from a Bailor  
because he has a special property - for both have it equally -

From the nature of the contract of Bailment & the obligation flowing from that contract, it follows that the Bailee is not only obliged to keep the goods according to that contract, but that he must be responsible for any loss or damage they may sustain during the Bailment & yet as this would be manifestly unjust it is a general rule that he is not liable for any loss or damage which may happen without any fault of his. To determine when he is in fault the nature of the Bailment the quality of the thing bailed as well as his conduct, are all to be considered. In different kinds of Bailment require different degrees of care. Some Bailees are in a higher degree than others where the subject of the Bailment is the same. So where the subject is the same the care will be greater or less according to the quality of the thing bailed, for where one deposits goods with another to keep gratuitously, the Bailee is not bound to observe that care which a common carrier is who receives his price. The uncertainty this necessaries degree of diligence in every case that occurs constitutes the principal difficulty under this title.



Bailment

Ed. D. H.  
2  
1811. 10. 69  
05

2<sup>d</sup> In the other cases, where the Bailor only retains  
 some benefit over the thing deposited, he is bound  
 to use more than ordinary care. The distinction between  
 Jones 15. 16. 23 to use more than ordinary care. The distinction between  
 33. 81. 90-1. Bailment advantageous to the Bailor & those advantageous  
 to the Bailee is evident from the maxim *Auctior est  
 conditio commodum melius debet onari*.

3<sup>d</sup> When the bailment is advantageous to both parties  
 the obligation stands in equilibrium, in an even balance  
 Jones 14. 22 & the Bailor is presumed to be benefited in the same degree  
 101. 105. 23. 32 with the Bailee. Here the ordinary diligence only is necessary.

### Different kinds of Bailments

According to the Com Law they are divided into 6 kinds  
 & were so divided by the Roman Law whence our ancient  
 Jurists divided them. I don't think the division a logical  
 one. It ought to be with reference to the difference in  
 principle. But we shall pursue it as laid down.

La R<sup>e</sup> 912-13. 1. The first species of Bailment is called a Depositum  
 Bul. N. 72. This is a delivery of goods to the Bailee to be kept  
 for him without reward, for the use of the Bailor.  
 Jones 50-1  
 1 Bowler. 247.  
 1 Bar. 243  
 Esp. 618  
 This is called naked Bailment, & the Bailee  
 (unkindly) the naked Bailee. as where one delivers  
 goods to another to be kept by him for his use  
 (in bailment, in deposit) without reward. The Bailee  
 is here called the depository.



# Bailment

263

La. R. 913-152 The second species is called Commodatum  
 Bon. 247-9. & is a gratuitous loan of goods which are useful, to  
 Bon. 50-1- be used by the Bailee & to be returned in species, as here  
 3. A. R. 72- Baic. 243. one borrows a horse without paying for its use - The Bailor  
 3p. 818. & usually called the Lender & the Bailee the Borrower -

This class of Bailment is called a loan for use -

But there is a difference between this & what is here  
 is called a mutuum. The latter it is true is generally  
 gratuitous; but it is a loan for consumption because  
 the specific article is not to be returned - Thus if one

Lend. & stud. loans money to another to be restored in equal sum  
 29. 1 Baic. 241. This is not a commodatum - To if it be an article of  
 Jones 89-90 consumption as a Barrel of Flour, it is a mutuum  
 Here the absolute prop<sup>y</sup> is transferred to the Bailee  
 & consequently he must bear the loss at all hazards -

La. R. 913- 3 Bailment of the third kind is called locati & conducti  
 & C. 72 2 is a delivery of goods to be used by the Bailee for some  
 20 50 or some other purpose to the Bailee. Here the Bailee is  
 Bon. 247 called the Lender or Locator & the Bailee the Lessee  
 3p. 818 or Conductor - The goods are to be used for some  
 3p. 818 purpose & the Bailee is to be paid for the use of them -  
 Jones 86 This is the case here - Therefore one who hires a horse  
 - 112 for a journey is a bailor of the 3<sup>d</sup> kind -



Ballment







# Bailment

267

specifically a person to keep the goods the  
acceptance is general for the owner is bound to  
be his officer or from voluntarily then to the care  
of person of known character & vigilance. Thus  
the first the opinion of Jones that he ought to be liable  
for ordinary negligence is but this is too narrow for  
application — Southcott's case was a delivery of  
goods to be kept safely in a house not a detention. He  
explained that the goods were stolen. To this there was a demand  
of the value & then a judge insufficient. The Court then  
decided in that way a reference to the whole of the case  
that the goods shall be kept safely which would  
subject the Bailee for less than ordinary negligence —

Then the decision in this case was proper. For first the Bailee  
guaranteed the goods safely & 2<sup>nd</sup> the plea was that for the  
loss of the goods only, that they were stolen & he could have  
proved that they were stolen without any neglect or  
default of his — But the action was in tort —

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# Bailment

269.

4th B.C.  
2d B.C.  
3d B.C.

There clearly is no doubt - can he be liable for goods  
solely if he does not know that he is the Bailor & that  
the goods were goods - the effect he would treat  
them with greater care & attention than if he were  
ignorant of it - If he were ignorant he would be a proper  
Bailor for goods when he is - then it states that the Bailor  
is informed by the Bailor that there are goods in the chest  
which on the time of Sir Coke the doctrine of Bailment  
was little known & therefore there are numerous errors  
in Lord Hale's Case. All Hall says the general principle  
is - having taken them from the Bailor who took them from  
the Bailor - he is liable - his own ideas are that he  
clearly ought not to be liable if ignorant of the contents  
of the chest unless he has been guilty of gross negligence  
as it respects the chest & even then - should not be  
liable he would not be liable, because the law is such that  
if he has known that it was in the chest he would be liable  
before any of it. If then we apprehend in this - that the Bailor  
is not informed of the contents of a chest or another chest he has  
not committed the breach of those goods as to which he is  
guilty - but if he is - then he is liable - but in the present case  
he has not committed the breach - the first is the fact - the second  
the law is not really a contract - but a bailment - and the  
ignorance of the Bailor is the fact - the possession is not a contract  
and the Bailor is not liable for the loss of goods - but for the  
loss of the goods -

Pailment







Sailment

June 20th 2nd day of June 1851. The ship sailed from New York for London at 10 o'clock AM.

Lock III. The ship sailed from New York for London at 10 o'clock AM. The ship sailed from New York for London at 10 o'clock AM.

June 21st 3rd day of June 1851. The ship sailed from New York for London at 10 o'clock AM. The ship sailed from New York for London at 10 o'clock AM.

June 22nd 4th day of June 1851. The ship sailed from New York for London at 10 o'clock AM. The ship sailed from New York for London at 10 o'clock AM.

June 23rd 5th day of June 1851. The ship sailed from New York for London at 10 o'clock AM. The ship sailed from New York for London at 10 o'clock AM.

June 24th 6th day of June 1851. The ship sailed from New York for London at 10 o'clock AM. The ship sailed from New York for London at 10 o'clock AM.

June 25th 7th day of June 1851. The ship sailed from New York for London at 10 o'clock AM. The ship sailed from New York for London at 10 o'clock AM.

## Bailment

Thus Excuse, is immaterially raised slight at right.  
 There is but one Principle in the Law of Bailment  
 which uses the perpetuative objection - (and this Doctrine  
 of Holt is opposed to principle. There is no decision on  
 this point - The thing bailed then is to be used with  
 ordinary care - He is excused in case of Robbery,  
 regularly, unless it was occasioned by want of ordinary  
 care. (And this is the most usual species of Bailment, yet  
 it is one on which there is the least Law -

In Eng. the hired is liable if he loses the horse or  
 an unlock a stable & he is stolen - because there it would  
 be a want of ordinary care - In this country I think the  
 practice of London men in harness places where  
 such acts occur, must regulate the degree of liability,  
 in Law. I think the rule would not apply -

11 Ben. 531. The Bailor of a chattel let for hire, is not bound  
 to keep it in repair during the time of the Bailment - 11  
 120. 321 Wagon - Deny 120.

IV. Fourth Class is called a Pawn or Pledge. (And the  
Bailment is defined to be a delivery of goods, yet it is  
 often used as the thing itself which is bailed. The  
 fourth kind is a delivery of goods as a security for a  
 debt due from the Bailor to the Bailee - (And this  
 is substantially a mortgage of personal property, & for most  
 purposes the great principles of Law applicable to mortgages

# Bailment

2d 913 -  
460. 253  
1 Bac. 237

are applicable to pawns, i.e. those a law govern  
the rights of the parties. Hence the maxim  
"once a mortgage, always a mortgage" applies in  
this case to pawns mutatis mutandis. "once a pawn  
always a pawn" i.e. no collateral engagement between  
the parties at the time will prevent the pawner  
from redeeming - but it has been decided that where  
there was an absolute sale of goods & a written instrument  
which shewed that the goods were given in pledge it  
appeared that the parties agreed, if the debt was not paid  
at such a time the pawnee should consider the property  
as a sale. The Ct decided that the pawner had all  
the privileges of a pawnor & therefore the delivery  
should not be a sale.

1886

2d 917 -  
Rev. 252

Balk 523 Jones, only for ordinary neglect -

See 1st 89 -

The Bailment being advantageous to both parties  
the Bailee is bound only to ordinary care & liability

I was told in Lawrence in Southcott case that  
the pawnee was bound to keep the goods only as his  
own, & the reason is that because a pawnee has a  
property in them. Hence before that every Bailee  
has a special property in the thing bailed. The doctrine  
of this doctrine of 1d case would be true. But as it stands  
it is not Law



# Bailment

275

as he is bound only to ordinary care he is excused certainly in the case of robbery - He may however be liable in damages where he is merely negligent - In the case of a pawnbroker, it is better that he should be liable in damages than in the case of a borrower. His position is not the same as that of a borrower where he is excused by the fact of the robbery. In the case of a pawnbroker he may be liable for the loss of the goods if he is not careful.

In the case of a borrower, he is liable for goods stolen unless he shows extraordinary care. This is Law. But it is wholly inconsistent with this rule - The rule laid down by Lord Jones is also rather arbitrary. It is contrary to common sense & experience. But he denies this rule himself in his own work, for he says in the case of a borrower, he is liable for goods stolen, unless he shows extraordinary care. This is Law. But it is wholly inconsistent with this rule -

The pawnbroker gains a qualified interest in the thing bailed but this determines more or less by bargain or tender to the pawnbroker of the sum due at the day of payment & tender is in this case equivalent to payment. If therefore after payment or tender by the pawnbroker & a refusal to take the pawnbroker retains the pledge he is a wrong-doer & is liable for any loss that happens by whatever means it may happen. For the moment he is guilty of a breach of trust, he loses





22 716

24, 1 225

in the case of paovers, after the use of goods found. He does not mean that all the distinctions obtain. He means that the degree of diligence required of the finder of goods is determined by the nature of the goods. In some they agree, in others they are self-

Long Glen.

10. 11. 1950

Feb. 1891

lesn. 899.

## Bailment

§ 40. 146 - as an action of Trover, it must always be a  
 Exp. 3. 570 - misfeasance. To find the obligation in books, we must  
 look for one to oppose to all the authorities.  
 4. 600 -  
 5. 100 -

In one point of view it would seem that as the finder  
 of goods receives no benefit from the keeping, he ought not  
 to be liable for any thing but gross neglect. But there is  
 a great difference between a Finder & a Debonitary. In  
 the case of a Debonitary the Bailor might have chosen  
 what one he pleased or have taken security. He would  
 have chosen a good one, or made a contract, & the goods  
 should be kept safely. But this does not apply in the case  
 of a finder. He is not strictly a Bailor. The goods are not  
 delivered to him. He acts as a Finder, not as a Bailor.  
 & therefore he must be kept with at least ordinary  
 care. For if he has not taken the same perhaps the true  
 owner would. In most if not all the States there can  
 be no doubt on this subject as it is regulated by Stat.

It is a settled point that at common law the finder has no  
 2 H. Bl. 254 -  
 2 Bl. 2. 117. -  
 15. 605 -  
 Exp. 3. 485 -  
 upon the goods found & if he upon demand & reasonable  
 evidence of ownership, furnished refuses to deliver them up  
 he is liable in an action of Trover although no damages  
 are at first tendered.

The case of *Palgrave* is diff. from this -  
 See R. 593.  
 3 B. & P. 270 - as much as it depends upon the principle  
 of the *Palgrave* case & the Law.



But can a finder recover a recompense in any way? I know of no principle of the Com Law by which he can. There is no privity of contract between him & the owner. The landowner is not bound to him, but the owner must maintain an action if the owner is made better on the ground of fact or contract. But fact is out of the question. The owner has been guilty of no wrong. He must recover then if at all on the ground of contract. But what contract is there? It is a principle of the Com Law is distinguished from the Mercantile that no man can make another his Debtor, or a mere gratuitous lender. To be sure when one is compelled to do a thing as if for instance, I B. does it for him at the request of him to sign a bond for which he had signed another. Here as I was compelled to do it, B. who does it for him may have an action because he has a right by the express contract. But in the present case there is clearly no express contract. Is there an implied one? Probably not, because there is no implied contract. The finder don't know the owner. On the whole I should say that the finder could maintain an action for the transfer & expense of the horse.

A refusal by a finder of goods to deliver them on demand made by the true owner is not of course a conversion. A concession in the Law of Torts



## Bailment

2 Bulb. 31<sup>st</sup>

Exp. L. 590.

30 Feb 125 then again. I they are obliged to pay over again because  
 2. Bae II they are voluntarily in the first place. But upon the fact  
 'H. Pl. 667  
 682 Administration Act I they are obliged to pay them of the  
 "Attorneys the time & cost" more than for the same debt. The law  
 will not impose a second payment.

Debt. 16th  
 2nd Bank  
 326th  
 4th 413  
 In case of an Act who recovers a former debt, applies  
 to the Debtors, who voluntarily pay they are not to pay over  
 again - debt is this has been concluded by Law in the first  
 instance - 4th Principle - that where the Law is once  
 impleaded a person to pay that Law will not compel him to pay  
 again for the same thing - There is another class of cases.  
 The case of a Bankrupt is noted completely in the assignment  
 of the Bankrupt's Debtors who have voluntarily assigned  
 may not him & not him to pay it over again. But if  
 the Bankrupt goes into another country & meets a creditor  
 in his own name & a debt is given & recovers, this creditor  
 will not be compelled to pay it over again. I then this  
 question could arise & there should be no decided case I think  
 had the recovery in the first instance could be a second  
 action for the same & applicable to all the analogies  
 of Law in similar cases.

If perishable goods are pledged & decay & pawnce is  
 1 Mar 338. answer him money for the debt contained in the pawnce  
 1 Mar 409. is discharged. The pledge is a security, not a payment.  
 1 Mar 423. The same rule holds in the case of a pawnce under the Law  
 1 Mar 398. of Nations. As where in *Porter v. The London & Lancashire*  
 2 Mar 1836. bank a deposit was made. This is a species of bailment.  
 1 Mar 383. So too where a pawnce remains in the hands of the pawnce

unimpaired & is made for the money & interest. If  
 1 Mar 419. it makes an agreement not to sue while it is in the pawn  
 2 Mar 416. he cannot. In fact the remedies are the same in the  
 1 Mar 177. case of mortgage.

1 Mar 338. But if the money is not paid & the pawnce abandons the  
 1 Mar 338. pawnce has been converted in the pawnce absolutely at their bid  
 1 Mar 205. like a mortgage the pawnce has a right of redemption  
 1 Mar 191. in equity and the agreement is that the property of debt  
 1 Mar 698. is secured by the pawnce is absolutely vested in the pawnce.

If the pawnce is paid & the pawnce is the pawnce, i.e.  
 1 Mar 338. the pawnce of ordinary cases in the pawnce - the  
 1 Mar 338. debt of money was extinguished. But this does not seem  
 1 Mar 338. to be a very reasonable rule since the pawnce is liable  
 1 Mar 338. to the pawnce for the value of the thing pawned. It is  
 1 Mar 338. however that if the pawnce use diligence in keeping the thing  
 1 Mar 338. pawned & it is lost, it shall not be an extinguishment of the debt.



A Factor, is a foreign commercial agent who has a right to sell the goods of his principal has no right to pawn them. He cannot by a contract give any power or lien upon the goods as ag<sup>t</sup> his principal. That he may have the power to pawn as an agent but not as Factor. He cannot transfer the lien which he has himself upon them. For a lien is a personal right which is not transferable.

Stair 178  
14. 11. 362

14. 11. 362  
5. 1. R. 604.

Book 5

When the Factor does transfer and pawn the principal may maintain trover ag<sup>t</sup> the pawnee by payment tender to the Factor. He can pawnee retain them for the amt of factor's good till the day of payment. After the day of payment has elapsed the pawnee may sell the pawn because in law it is absolute in him. In better he is in Equity liable for the loan it calls for over & above the first Debt I have not that it is settled in the books. He I have no doubt but that he might in Equity if not at Law by Statute.

Book 205

As ag<sup>t</sup> the assignee of a pawn the pawnor cannot pawn his right of redemption. As to the case of an assignment of a mortgage. Hence he should have another remedy in the surplus left after payment of the debt.

Book 258.

Book 124

Book 29-31

It has been held that the pawnee may assign his pawn before the day of payment i.e. he may transfer his right.

Book 244

Book 178-

5. 1. R. 606-

But we must remember from our law & equity views that the other way is better known viz. the lien is a personal right which cannot be transferred. It is a fiduciary contract. But there are certain other rules which seem to show the contrary.



1 Inst. 8.

12 Co. 12.

12 Co. 556

Moore 100.

12 Co. 28-

2 Co. 376-7

12 Co. 272

12 Co. 274

12 Co. 279

12 Co. 279

12 Co. 238

That a pawn cannot be forfeited by a pawnee for his crime & as I have said because he has only a lien upon it: But every man is regularly capable of forfeiting by his crime & loss. So a pawn is capable of carrying away, i. e. a pawn is a fact of his for every transfer - He cannot then transfer a pawn because he cannot forfeit it.

This argument gains strength by the rule that a pawn may forfeit the pawn by his crime - true not so as to be detrimental to the pawnee for the pawn cannot have a lien by laying it down. The debt due -

Again the law says - A pawn is a lien that a pawn cannot be given by a pawnee. The pawn is a lien of great weight - and a lien, 12 Co. 239.

Therefore the nature of the case shows an obligation to the right to transfer a pawn before the time of payment. The pledge is in the nature of a security - not now of the pawnee may transfer. The pawn is a lien of great weight of taking it forever for it shows a lien - a lien is a lien. This is different from the exception of being mortgaged which cannot be run away with. A pawn is a lien - a lien cannot be taken in Execution for the Debt of the Pawnee.

Dec 12 4.

[illegible]

But it 29. even after the pawners death & the

26. 44. representatives may take up Equity after his own death. But

There must be some limit fixed by Law to the right speed.









Case 102-3.  
89.  
3d 102-  
402.  
402.  
402.

... to maintain his property in the same place as the  
... in the same place as the ...  
... only by the ...  
... the owner of that specific thing - this is like wheat given to the ground  
... to be made into straw, & applied into cider - according to the  
... of the contract the thing is to undergo a change -

It does not seem to follow as principle in this case by  
... that - all cases of a sale the carrier is liable for  
... because the liability rests  
... by the delivery -

There are certain cases occurring by act of God - thus if  
... is destroyed for ... the carrier is not liable -  
... the carrier liable or not? & if so, to what extent? The carrier  
... to deliver whatever he finds in the place -

3d 102-5-

... belong to who - he may - ...  
... the carrier is liable because he is negligent in ...  
... the goods that they may be destroyed but there is no  
... no clause in the act - If the goods were destroyed for  
... for the carrier from the depositary is liable only  
... in gross neglect which is evidence of fraud - and I should  
... of the carrier after would be apt to be liable -  
... of the carrier of the goods were destroyed, for they have  
... towards the depositary of the carrier's duty.

When the carrier is bound to do some act of skill on the line  
... calling the line implies a contract for two fold  
... a type of ... the ...  
... the work skillfully. Here of cloth is bound to a ...  
... to the carrier -

3d 1st 1st.

Co. 1st.

Princ. 2d.

Th. 1st. 1st.

The first case is where the Bailor is not the owner of the property. In such case the Bailor is not liable for the loss of the property. The second case is where the Bailor is the owner of the property. In such case the Bailor is liable for the loss of the property. The third case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The fourth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The fifth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The sixth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The seventh case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The eighth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The ninth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The tenth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property.

Princ. 5d.

2<sup>d</sup> of Bailm<sup>t</sup> is a person exercising a public employment as Bailor of the 3<sup>d</sup> class of the 5<sup>th</sup> kind. In such case the Bailor is liable for the loss of the property. The third case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The fourth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The fifth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The sixth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The seventh case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The eighth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The ninth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property. The tenth case is where the Bailor is the owner of the property and the property is lost. In such case the Bailor is liable for the loss of the property.

# Bailment

## I. Common Carrier. A common carrier is one who carries goods for hire or reward.

June 1890-  
Banc 343-  
Banc 2718-  
Kob. 18-  
18th. 24

He is distinguished from a private carrier in that the latter does not make it his usual business to carry goods for hire or reward.

June 143-  
152

It was formerly supposed that a common carrier was not liable for the loss of goods unless he was negligent. But in *Haymer v. The City of London* it was held that a common carrier is liable for the loss of goods unless he can show that he was not negligent.

Oct 623-  
Dec 440-  
18th. 78-  
Banc 62-

But the master of a common carrier is not liable for an action unless he is in the nature of an agent of the common carrier.

15th 344  
3rd 18-  
Sub. 10-  
3rd 16. And 16

A common carrier having commenced to carry goods & being offered to carry more, he is liable for an action on the case because he has become an independent contractor. But he is not liable for any loss which will employ him - the case is precisely the same as a common carrier.

But the master of a common carrier is not liable for the loss of goods unless he is in the nature of an agent of the common carrier.

Oct 623-  
4th 1890

But the master of a common carrier is bound to receive goods still he may make a conditional or special acceptance. Thus he may accept goods for the purpose of carrying them to a particular place. In such a case the master is not liable for the loss of the goods unless he is negligent. He is not however allowed to demand more than the demand must be made for the goods.







Bailment

July 1<sup>st</sup> - Taken at 2 hrs. 10 min. - tracks and the tracks white







4 The terms of these notices vary. The provisions of some go in discharge of the liability of the carrier entirely, unless the terms are complied with; see one of this kind in 1 H. Bl. 298. Others limit the responsibility of the carrier to a certain sum if the conditions are not complied with - of this kind see 5 East's R. 544. The validity of these notices is acknowledged to be legal, notwithstanding they are liable to abuse & often productive of great inconvenience, in 5 East's R. 507. - 428 <sup>case cited in</sup> 5 do. 507. 4 Binn 2298. Paul, N. B. 71. As to the manner of giving the notice vide 4 Rep. N. B. C. 178.

A carrier who by the usage of a particular trade is to be paid by the consignor for the carriage of the goods, has no right to retain them of the consignee for a general balance due to him for the carriage of other goods of the same sort sent by the consignor. 2 Bos & P. N. B. 84. -

In 3 Com. R. 25 Holt N. B. it was held that Hackney Coachman was not a common carrier within the custom of the realm & could not be charged with the loss of passengers goods. <sup>see above</sup> here there was an express agreement & money paid for the carriage of the goods. In talk 282 there was a similar decision respecting stage coachmen except what took a price for carriage of the goods distinct from that of the persons. But in a later case 4 Rep. N. B. C. 147 where an action was brought by the proprietor of a stage coach to recover the value of a trunk which had been lost while Piff was travelling in Defeld's coach, Defeld proved that he had given notice that he would not be liable for any loss above the value of £5 unless. & for as such; & then contended that this notice applied to the case of goods sent to be carried only, & not to the case of passengers' baggage - But Sir. Ellenborough said that it had been decided that the baggage of passengers came within the exception. So per Chandler in 2 Bos & P. 219. It has been determined that if a man travel in a stage coach & take his portmanteau with him, tho' he has notice upon it, yet the carrier is not absolved from his responsibility, but will be liable if the portmanteau be lost.



If a coachman commonly carry goods, he will be in the same case with a common carrier; & is a carrier for that purpose, whether the goods are a passenger's or a stranger's. Jones sent in 2 Phos. 127. —

Coach owners are not liable for injuries which passengers may sustain from inevitable accidents, as from the overturning of the coach by the horses taking fright, there not being any negligence in the driver. But they are answerable for any injury sustained by a passenger through the misconduct of their driver. *Peake N.B.C. 87.* —

The form of the Writ is Assumpsit. It is an act int. ex delicto but ex quasi contractu. See 2 Wils. 319. 3 East. R. 62. The advantage of pleading in ass't is that it lies in all the courts with the special counts in ass't. There are other causes of debt to which they are applicable — But the inconvenience arising from it is that it lies in a plea of abatement for not joining all the defendants, & excludes the right to join a count in Trover. See *Selv. N.B. 340-1.*

The Lien of Carriers depends on custom or contract. 5 East. R. 579.

In 1 Rep. N. S. R. 109. Le Mansfield said that Liens were either by the com<sup>l</sup> Law usage or agreement. Those by the com<sup>l</sup> Law were where the party was obliged to receive the goods — & that in this case evidence of the usage was admissible — & that wharfingers had a Lien — & in 3 East N.B.C. 81. Leeson held that wharfingers had this Lien for his gen<sup>l</sup> balance & for debts bonded by Stat. of Limitations, of which only the remedy can be taken away by such Stat. See also 3 Bos. & P. 44 (a) & 42.

5 East. 579, 70a 224. But gen<sup>l</sup> Liens are not to be favoured, & a few instances of such a custom are insufficient to establish it.

Actions of Carriers must be Per'ed by the owner of the goods. Hence where one owner's goods to be sent by a carrier, at the moment the goods are delivered to the carrier & operate as a delivery to the purchaser, & the whole property (liable only to right of stopping in transit by the seller) vests in the purchaser, he alone can maintain an action of the carrier for any loss or damage to the goods, & this he can do well where the particular carrier is not named by the purchaser, as when he is not named by vendee in delivery to vendee.

In 5 Binn 2680 it was held that consignor might maintain an action but this was on the ground that consignor had made himself responsible to the carrier for the price of the carriage.

In 15 R. 159. where the act<sup>n</sup> was also brought by consignor & off<sup>r</sup> Law appeared in his declaration that the hire was to be paid by him, for that the hire was to be paid by the consignee was held not to be a variance, because consignor was by Law liable. —

# Bailment

1845-1846. 110. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.

1845-1846. 111. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.

1845-1846. 112. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.

1845-1846. 113. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.

1845-1846. 114. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.

1845-1846. 115. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.

1845-1846. 116. The owner of a horse found dead. The instructions of the owner were he is clearly liable if it is his business to take the horse to the show. The owner of the horse is liable for the horse's death. The owner is liable for the horse's death.











1. Delivery of goods to another person for a special purpose.

2. The goods are returned to the owner or his agent.  
 3. The bailor is not to be liable for the loss of the goods if the loss is caused by the negligence of the bailee.  
 4. The bailee is not to be liable for the loss of the goods if the loss is caused by the negligence of the bailor.  
 5. The bailee is not to be liable for the loss of the goods if the loss is caused by the negligence of a third party.

6. The bailee is not to be liable for the loss of the goods if the loss is caused by the negligence of the bailor or a third party.  
 7. The bailee is not to be liable for the loss of the goods if the loss is caused by the negligence of the bailor or a third party.  
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 14. The bailee is not to be liable for the loss of the goods if the loss is caused by the negligence of the bailor or a third party.  
 15. The bailee is not to be liable for the loss of the goods if the loss is caused by the negligence of the bailor or a third party.

3ailment

1864-1865





# Parliament

get very quiet. I believe if a hundred men had been  
with the British, we could have been made -

June 20th.  
p. 10-11

But the three men have been in the country for  
months.

Get the British, some of the men, and make  
them a command. The men are now in the country  
and the British are now in the country. The men are  
now in the country and the British are now in the country.

The men are now in the country and the British are now in the country. The men are now in the country and the British are now in the country. The men are now in the country and the British are now in the country.

There is much to be done. The British are now in the country and the men are now in the country. The British are now in the country and the men are now in the country.

Get the British, some of the men, and make them a command. The men are now in the country and the British are now in the country. The men are now in the country and the British are now in the country.

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1840-41-42

15 June 1940

1891.

\_\_\_\_\_

§ 611. Bailment is the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

§ 612. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

§ 613. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

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§ 615. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

§ 616. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

§ 617. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

§ 618. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.

§ 619. Bailment is created by the delivery of goods to another person for a special purpose, to be held by him for the use of the bailor, and to be returned to him or his assigns when the purpose is accomplished. It is a contract.



# Bailment

309.

1. The bailor is bound to deliver the goods to the bailee in good condition and to warrant the title.

2. The bailee is bound to take care of the goods as a prudent man would take care of his own goods and to return them in the same condition as he received them.

3. The bailee is liable for loss or damage to the goods if he is negligent or if he uses them for a purpose other than that for which they were bailed.

4. The bailor is not liable for loss or damage to the goods if the bailee is negligent or if he uses them for a purpose other than that for which they were bailed.

5. The bailor is not liable for loss or damage to the goods if the bailee is negligent or if he uses them for a purpose other than that for which they were bailed.

6. The bailor is not liable for loss or damage to the goods if the bailee is negligent or if he uses them for a purpose other than that for which they were bailed.

7. The bailor is not liable for loss or damage to the goods if the bailee is negligent or if he uses them for a purpose other than that for which they were bailed.

8. The bailor is not liable for loss or damage to the goods if the bailee is negligent or if he uses them for a purpose other than that for which they were bailed.



## Dial wien

I am really anxious of you & that I should be able to  
 be a witness to your growth. In the same way  
 the children of the old world are born of you.

By the way, I am sure you will be a great success.

- Jan 20. I am sure you will be a great success. & I hope to see you  
 20th Feb. just finished with the same result. I am sure you will be a great success.  
 1st Mar. I am sure you will be a great success. I am sure you will be a great success.  
 1st Mar. I am sure you will be a great success. I am sure you will be a great success.  
 1st Mar. I am sure you will be a great success. I am sure you will be a great success.

I am sure you will be a great success. I am sure you will be a great success.  
 I am sure you will be a great success. I am sure you will be a great success.  
 I am sure you will be a great success. I am sure you will be a great success.

- Jan 20. I am sure you will be a great success. I am sure you will be a great success.  
 1st Mar. I am sure you will be a great success. I am sure you will be a great success.  
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I am sure you will be a great success. I am sure you will be a great success.  
 I am sure you will be a great success. I am sure you will be a great success.  
 I am sure you will be a great success. I am sure you will be a great success.

I am sure you will be a great success. I am sure you will be a great success.  
 I am sure you will be a great success. I am sure you will be a great success.  
 I am sure you will be a great success. I am sure you will be a great success.

submit the evidence in the case to the court & to the jury. If the court is satisfied that the evidence is sufficient to support the verdict, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial.

The court must be satisfied that the evidence is sufficient to support the verdict. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial.

Therefore, the court must be satisfied that the evidence is sufficient to support the verdict. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial.

To the court must be satisfied that the evidence is sufficient to support the verdict. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial.

9th 400

15th 400

18th 400

If from the nature of the business the presumption of ownership is extended to the time when the goods are sold. In the case of a person who is a partner in a firm, the presumption is that he is a partner in the firm. If the court is not satisfied, it will order a new trial.

The court must be satisfied that the evidence is sufficient to support the verdict. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial.

However, if the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial. If the court is not satisfied, it will order a new trial.



Beimont



## Bailment

a condition of bailment. The bailor, who is the owner of the goods, is bound to deliver them to the bailee, who is the person to whom they are lent. The bailee is bound to take care of the goods and to return them to the bailor when they are no longer needed. If the bailee fails to do this, he is liable for damages. The bailor is also liable for any loss or damage to the goods if he is negligent in the selection of the bailee or in the terms of the bailment.

6211.04-  
p. 111-112  
1-11-11

1-11-11  
p. 111-112

1-11-11  
p. 111-112

1-11-11  
p. 111-112  
1-11-11

If goods are lent to a bailee, the bailor is bound to deliver them to the bailee, who is the person to whom they are lent. The bailee is bound to take care of the goods and to return them to the bailor when they are no longer needed. If the bailee fails to do this, he is liable for damages. The bailor is also liable for any loss or damage to the goods if he is negligent in the selection of the bailee or in the terms of the bailment.

If the bailor is negligent in the selection of the bailee or in the terms of the bailment, he is liable for any loss or damage to the goods. The bailee is also liable for any loss or damage to the goods if he is negligent in the care of the goods. The bailor is also liable for any loss or damage to the goods if he is negligent in the selection of the bailee or in the terms of the bailment.

But for demand & refusal the Bailor substitutes evidence of ownership. He may have done up the stranger, the stranger may purchase himself by returning to the Bailor before or pending the suit -

La N 246 - To most bailors & donees all may maintain -  
 B.N. 33. - Have he for the full value of the thing as a wrong doer  
 1 mod. 31 - as a common carrier, a special carrier, an assistant or  
 Palk. 143 - these take other Bailors can bring the proper action -  
 5 Bac 165. 262.

The promise of the Bailor right to sue as above is said to be his own liability to the Bailor -

And therefore it has been doubted whether a depository can have an action of trover he as a wrong doer under a general acceptance, or an acceptance to keep as his own - because he is not liable in these cases except for fraud, or gross neglect - In Southcot case it is said he cannot but I think I can -

A special property makes a bailment & he who has a special possession may maintain trespass & the doctrine in Southcot case is questionable for every

Bailor has a special property in the thing Bailor is not in a right to retain him a right of action as a stranger. His liability to the Bailor is not I apprehend the true ground of his right of action -

It has been held that a finder has a right to retain right all persons but the rightful owner & consequently may maintain trover & the 4th -

Bailment

4 mo 204. Comb.

Q 63. 1/2 mod. 54. /

12 Dec. 1892. 2 found.

28c. Jan 1 124-0, 7

138 - Cedar of 18

1. *Alcedo* - 1

According to a late decision, an uncertificated Bankrupt  
Having acquired property may have foundry of a steamer where  
shall take the property out of his possession - the the same  
7 S. 2 391. 678. does not nearly resemble that above - yet it was  
B. A. D. 411. Then Golden that a special property or even a special  
possession is sufficient of a wrong case -

Besides, the Debentary may by possibility be liable as, in the case of your neglect, this seems sufficient on the principle that the ground that the Bailor is liable is in our liability, for no Bailor is liable at all events, & how shall it be determined before hand in any case that there is an actual liability.

The principle advanced that Mr. Bailey cannot maintain the action unless he is liable would be equally an objection to any one's right to sue unless the question of actual liability were tried in the Bailey vs<sup>th</sup> ~~wrong~~ <sup>case</sup> ~~case~~ but the more clearly he is exonerated for the decision would not bind the Boston

also feeling anxious that the Bailor to keep, should have the right, for the Bailor may be at a distance and a special remedy necessary — Further — if the Expropriator have a special property with the law protect it! His right is of a higher nature than that of a stranger, as the stranger he may not! Considered the owner. Having a lawful possession which stranger can't have.

# Bailment

317.

1 Bac 448. 5. If a Bailor deliver goods to a stranger, the Bailee if he or she, seems may have an action agt any third person who violates Rule 60<sup>th</sup>. In consequence for he it is a special property & is liable to both Bailor & Bailee —

An Auctioneer may maintain an action on a contract for a sale of the goods he is to sell as he knows & belongs to another. He is a Bailee of the goods & for this reason a third person may have such an action —

When the Bailor & Bailee have a right to sue for the full amt there can be but one recovery agt for the full value — Therefore by one in London or London Bay the other action —

And it is said in Hall that if both sue he who first recovers shall not sue the other —

But I think the commencing an action for the full value by one ousts the other of his action of the same nature — a right of recovery being attached by commencement of the suit —

Art 98.  
60 Bac 77. does it clearly cannot maintain an action agt the Bailee 2d. 60. 12 for he cannot have but one satisfaction. In case of the case of the Bailee the Bailee must be the Bailee.

If the Bailor commences an action agt a wrong — does the Bailee is discharged in the Bailee this waives his election agt the Bailee. I find no authority in Foul. but I find in the case above stated that the Bailee in commencing his suit agt the wrong doer ousts the Bailee of his



act in it and a principle must be ascertained -  
 It is analogous to the case of rescue & escape in which  
 if the P<sup>r</sup> prevented it to rescue the D<sup>f</sup> is discharged -  
 It is also analogous to the case of electing one of two remedies -

Thus if the D<sup>f</sup> are detained damage & cannot in action of  
 Trover does not lie for damage done, but the question  
 of the action lies in election as to the two remedies -

To I think if the Bailor sue first for the full value he  
 makes himself liable as to events to the Bailor. This must  
 undoubtedly be the case if the Bailor is concerned in  
 a time for the full value with the Bailor of it -

3 JR-601. *Wagley vs. Green* The Bailor may bring an action for his special  
 damage, tho' the Bailor has recovered his full value, according  
 to the general rule "damnum cum injuria" gives an action -

If the Bailor himself takes the property from the Bailor  
 before his special property is determined, the latter may  
 have a special action on the case up to the point - but it  
 seems he cannot have Trepass or Larceny, for these actions  
 are for the full value. Besides if the Bailor's right to  
 have the horse is in any case, it is founded on his possible  
 liability to the Bailor, the foundation to such an action - falls  
 as w<sup>th</sup> the Bailor & his special property gives a right to those  
 actions I think only w<sup>th</sup> strangers - you must state in your  
 declaration the value of the horse & in the declaration is had  
 in Trepass & the value must be stated as a rule of damages -  
 The thing is not the Bailor's but his own, a special property in it, his  
 horse & carriage & can't deliver over to a stranger w<sup>th</sup> the order of the Bailor, &  
 horse has immediately with some. This also facts in connection

The Bailor may be liable in two ways, viz by an unlawful use or an unlawful detention

Bailor is liable in three ways - the two above & an unlawful taking - It is to be noted that Bailor's owner should mitigate damages. Thus if a horse is stolen in all cases where damages are merely mitigated when the full value is sued for or by retaking the property before suit. In the case of House the City has originally a right of action to recover the whole, which action can't be defeated by any subsequent act of the Deft. But the damages may be mitigated - But the special damages may be greater than the amt of the property & damages cannot be recovered in an action of House - If the Bailor contrary to the

4 PR 216. Bailor's order, deliver the good - to another he is guilty of conversion - 1 House Ric of him with demand -

Generally the Bailor can maintain no other action ag<sup>t</sup> the Bailor than Case a special action on the case for negligence, House conversion, & on the case too for apt<sup>t</sup>, on the Bailor & Bailor's right ag<sup>t</sup> a stranger where the vendor selects L<sup>i</sup> carrier / promise to deliver -

1 House 237 -  
 1 Black 42 -  
 1 Case 124 -  
 1 Black 781 -  
 1 Wain 282 -  
 1 Case 313 -  
 1 Case 62 -

Trespass will not lie, generally, because the original possession is Trespass, but if the Bailor delivers the goods the Bailor is acting as a bailee - There, if a third kills a horse, or wantonly burns goods, the Deft. must be occasioned by a voluntary act not mere negligence - Harris

8 Co. 146 -  
 1 Black 57 a  
 5 Co. 13 b  
 2 PR 465 -  
 3 Case 46 -  
 2 Black 555 -

# Factor & Broker

A Factor or Broker is an agent who is commissioned by a merchant or other person to sell goods for him & to receive the proceeds.

Foreign Factors are agents residing here commissioned by merchants sitting abroad, or vice versa.

Home Factors are agents resident here commissioned by merchants also resident here.

A factor is usually paid for his trouble by a commission of 10 much 12 per cent. on the goods sold. This sometimes he acts under a commission of

Del credere; ~~Lib~~ is an Italian mercantile phrase

which is of the same signification as the Scotch word "warrantice" or the English word "guarantee"; in a strict case for an additional premium beyond the usual commission the undertakes for the credit of the persons to whom he sells the

goods assigned to him by his principal. as to the nature & extent of this guarantee vide 6 Bro. P.C. 287, Mackenzie v. Holt. Aug. 9. 1 L.R. 112. do. 285.

Per. 178.

5 L.R. 604

11 L.R. 5.

6 Bosc. 17.

A factor cannot pledge the goods of his principal & if he does principal may recover or if the factor is a partner of principal then the factor & with any bona fide partner can't claim to retain of principal for factor's goods & if at the time of the pledge

to the with a bill of lading endorsed by the principal to the factor. & then too the party to whom factor endorses it, know not but it was the property of the factor.

A factor may sell on credit tho not particularly authorized by the terms of his commission as to do,

"Phillips 405.

2 Hays & Co. 489.



# FACTORS.

321

3 Miller  
114.

Joint-factor are in nature of coadjutors & liable for one as other, for the whole.

See 1182.

See 1182.

See 1182.

See 1182.

See 1182.

It is held by a factor according to the joint rule of Law created - without between the buyer & owner, & then even & here there is commission del credere given. Hence if factor sells goods & principal gives notice to the buyer to pay to him & not to the factor, buyer will be justified in paying to principal but not justification in paying to factor, & the principal may & cover the price in an action ag<sup>t</sup> the buyer unless factor has been on such price.

7 L.R. 389.

But if factor ~~and~~ cont del credere sells goods as his own & buyer knows so, a principal buyer may in an action be ag<sup>t</sup> him by the principal settle off a debt due to him by the factor.

Bul. N.D.

130.

Factor to a person beyond sea buying or selling goods in his own name, an action may be brought ag<sup>t</sup> him in his own name: for the credit will be presumed to be given to him in the first case, & the promise be presumed to be made to him - & the so the so as other is for the benefit of trade.

per Blount

2 Bos & L 490.

Where principal resides abroad he is presumed to be ignorant of the circumstances of the party with whom the factor deals, & therefore the whole credit is considered as subsisting between the contracting parties.

Emm. 252.

See 1182.

24 L.R. Bul.

6 Bos. 282

See 1182.

By the gen<sup>l</sup> usage of trade <sup>where</sup> there is course of dealing, & a gen<sup>l</sup> account between the merch<sup>t</sup> & factor & a balance due to factor he has a lien on all the goods in his hands for such balance of the gen<sup>l</sup> account with any regard to the time when or on what account he received the goods.



## Lien

## Factors

There are two species of Lien, viz. particular Lien  
& general Lien.

1. Particular Lien

2. General Lien

494.

1. Particular Lien

4. General Lien

Particular Lien is a Lien for one claim &  
right to retain goods in respect of payment or money advanced  
on such goods & there are no Lien in Law - General  
Lien are claimed in respect of a general balance of account  
& there are no Lien in Law only, & are therefore to be  
taken strictly.

1. Particular Lien

3. General Lien

4. General Lien

5. General Lien

6. General Lien

7. General Lien

8. General Lien

9. General Lien

10. General Lien

11. General Lien

12. General Lien

13. General Lien

14. General Lien

15. General Lien

16. General Lien

17. General Lien

18. General Lien

19. General Lien

20. General Lien

21. General Lien

22. General Lien

23. General Lien

24. General Lien

25. General Lien

26. General Lien

27. General Lien

28. General Lien

29. General Lien

30. General Lien

A factor is a Lien for his great balance & this  
for the advantage of the house & this Lien is an insurable  
Lien & is available for a debt contracted before the relation of factor  
& is not a Lien for a debt contracted after the relation of factor.

1. Particular Lien

2. General Lien

3. General Lien

4. General Lien

5. General Lien

6. General Lien

7. General Lien

8. General Lien

9. General Lien

10. General Lien

11. General Lien

12. General Lien

13. General Lien

14. General Lien

15. General Lien

16. General Lien

17. General Lien

18. General Lien

19. General Lien

20. General Lien

21. General Lien

22. General Lien

23. General Lien

24. General Lien

This Lien will not attach until the goods  
come into the possession of the factor.

1. Particular Lien

2. General Lien

3. General Lien

4. General Lien

5. General Lien

6. General Lien

7. General Lien

8. General Lien

9. General Lien

10. General Lien

11. General Lien

12. General Lien

13. General Lien

14. General Lien

15. General Lien

16. General Lien

17. General Lien

18. General Lien

19. General Lien

20. General Lien

21. General Lien

22. General Lien

And this Lien exists only such time as factor has possession  
for it is lost with possession after the Lien has attached, & factor  
with the Lien. But it is to be observed that

1. Particular Lien

2. General Lien

3. General Lien

4. General Lien

5. General Lien

6. General Lien

7. General Lien

8. General Lien

9. General Lien

10. General Lien

11. General Lien

12. General Lien

13. General Lien

14. General Lien

15. General Lien

16. General Lien

17. General Lien

18. General Lien

Where the factor is in advance for goods by actual payment  
or where he sells under a retention union whereby he becomes  
responsible for the price, he has a Lien on the price, although he  
should have parted with the possession of the goods - and

1. Particular Lien

2. General Lien

3. General Lien

4. General Lien

5. General Lien

6. General Lien

7. General Lien

8. General Lien

9. General Lien

10. General Lien

11. General Lien

12. General Lien

This rule holds the money should have been advanced by  
the factor at the time when he knew that the principal  
was in insolvent circumstances.

1. Particular Lien

2. General Lien

3. General Lien

4. General Lien

5. General Lien

6. General Lien

7. General Lien

8. General Lien

But where the factor has not any special claim on the  
goods & he has disposed of them & thereby he has lost the advantage  
arising by possession, the debt is to be considered as the debt of the principal  
& factor has no Lien on the price.

1. Particular Lien

2. General Lien

3. General Lien

# Factors

323

3 Nov. 17.  
485.

A factor has no Lien in respect of Debts which have accrued previously to the time at which his character of factor commences.

4 Dec. 66.

The maxim that the principal is Civilly responsible for the acts of his agent universally prevails, both in Law & Equity. — Hence —

Calc 289  
11 Feb. 20.

In March 'was held' an answerable for the deed of his factor who had sold some silk to the Plaintiff, good knowing, it to be bad — But in Pro. Abs. returned to me pl. 8. It is said 'If my servant sold false stuff in action the case does not lie ag<sup>t</sup> me, unless he did it with my leave or by my command.

3 Feb. 40.

In the case of factors & brokers a new rule of evidence prevails for here they have a direct interest in the event of a cause yet a factor is a good witness to prove the contract of sale in an action by the principal for the price & the goods sold, & this because of necessity and the nature of the transactions in which they are engaged the contracts they make for other persons cannot be proved without them.

24. Pl. 590  
11 Dec. C.D.

nor is there any difference in this respect between one who sells upon commission & one who is to have a share of the profit — Hence one who was employed to sell goods & was to have for his trouble whatever more or less he could procure for them beyond a stated sum — was a contract witness to prove the contract between the Buyer & seller —

Siens gen 7

La. R. 759.

— 867.

144. 235.

419. 123.

Conte Pd R<sup>o</sup> 738.

*2nd Lt. H. Mace.*

By the Com. Law, a Lord a party is allowed to receive goods.  
He is also entitled to retain them for his own community.

To R.H. 4<sup>th</sup> v. - visitors have been on 11<sup>th</sup> / 3<sup>rd</sup> / 3<sup>rd</sup> v. - missing in the land & payment recovered for their costs.

572. 488.

So a Love Banker has advanced money to customers  
he has a Lien upon all the securities which come in to  
his hands before in to that person for the full of his  
joint balance - unless there be evidence to show that he  
received any particular security under special circumstances  
which would take it out of the general rule

Ms. A. P. C. 268.

Is a valico printer has a lien upon the linen in his hands <sup>for</sup> the amt balance of his account for work done in the course of that business.

L. Dyers - 4 Esp. i. l. f. C. 53.

Factor - Amb. 252. cit 1 Burr. 494 L. 1. Oct 28. L. n.

<sup>upper</sup> 4 fingers - 1 Barb. N. P. 104.

Reg. N. 224, Bul. N. 45.

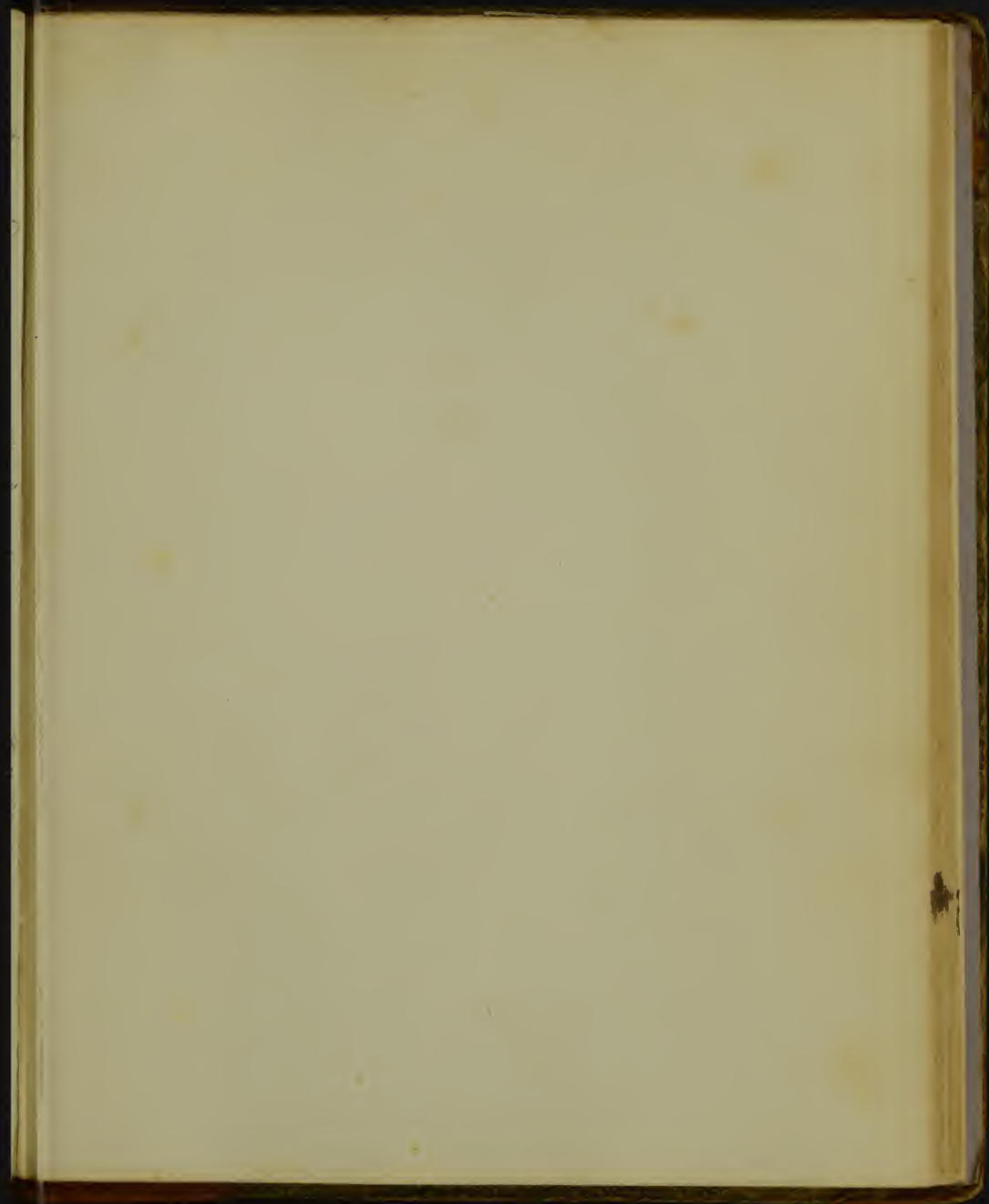
55. But this gentleman may be wanted by special appointment. Long Ave 1165  
Can you agree with a friend to come here for so much & for looking in all cases reasonable  
time, tender for a regular weekly paid for the keeping - Lower for now as he is to be  
to see Dept. has raised his fees for me, & could not therefore retain a position, not for looking.

plv. 67

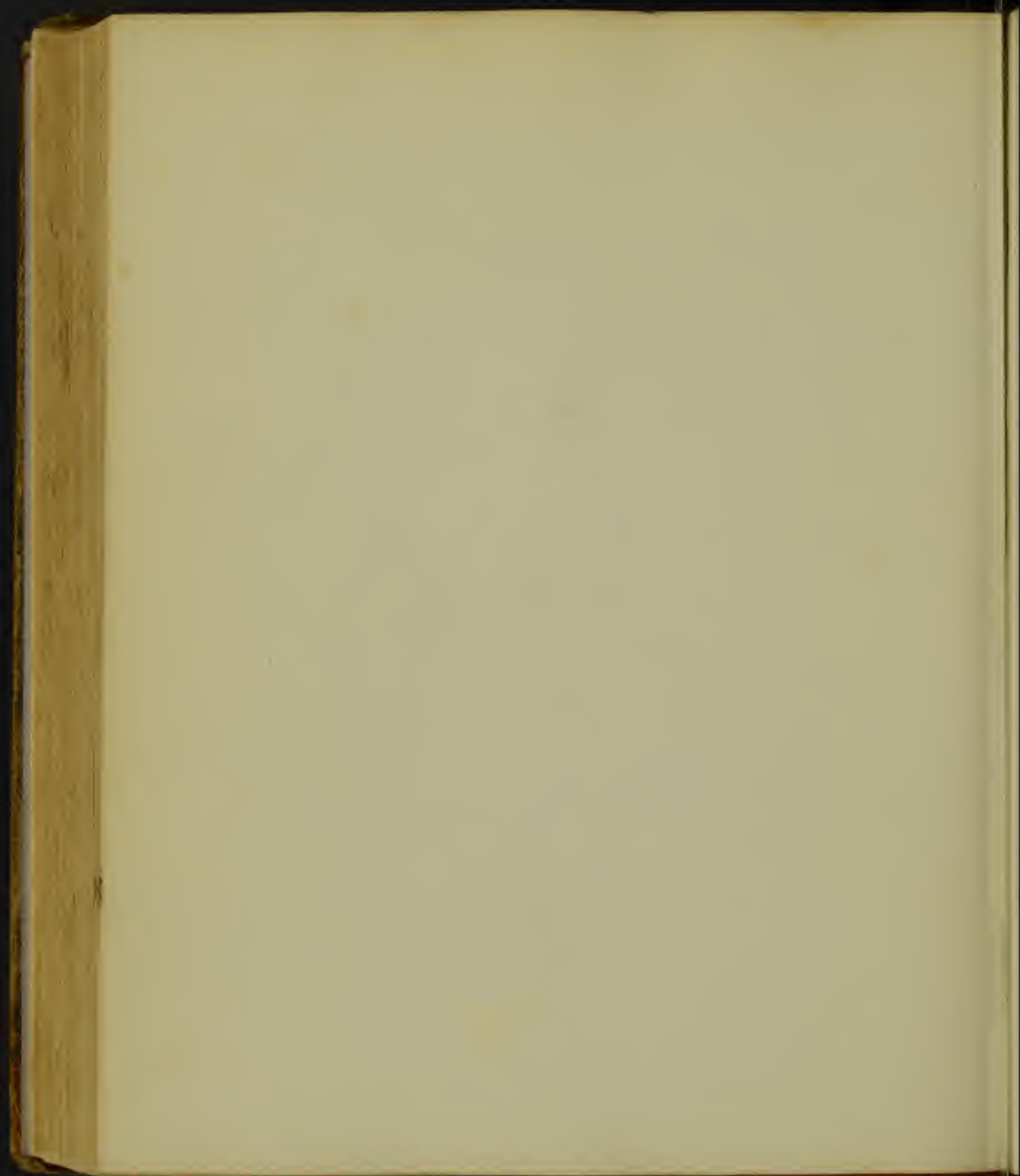
Stephen C. I.

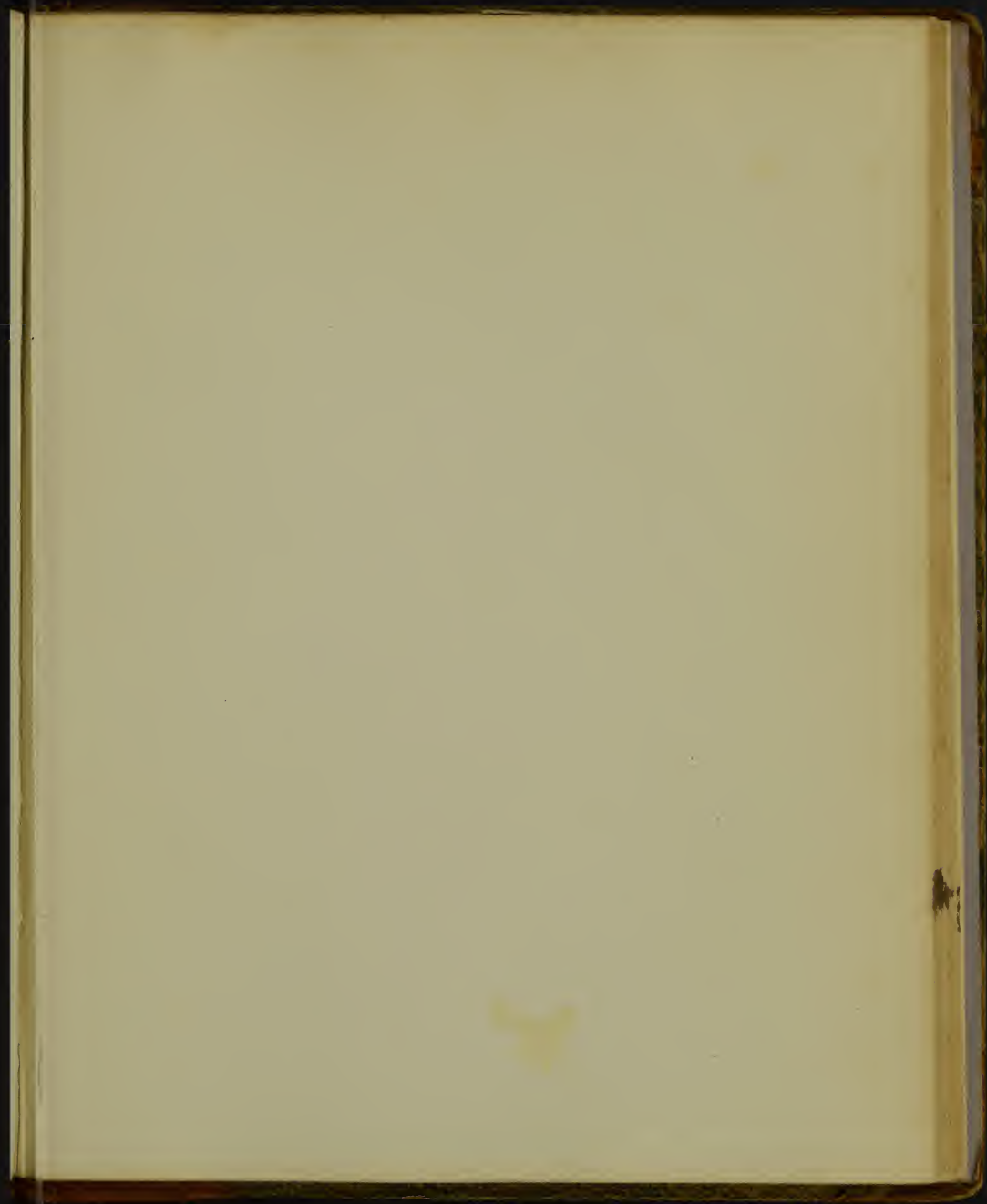
Bookkeeper "as a lien on a house left by him if no agreement was made for the payment of a certain sum, & now sell the house where he has cut out his house, but not if there be a special agreement that he has sold it - double his price

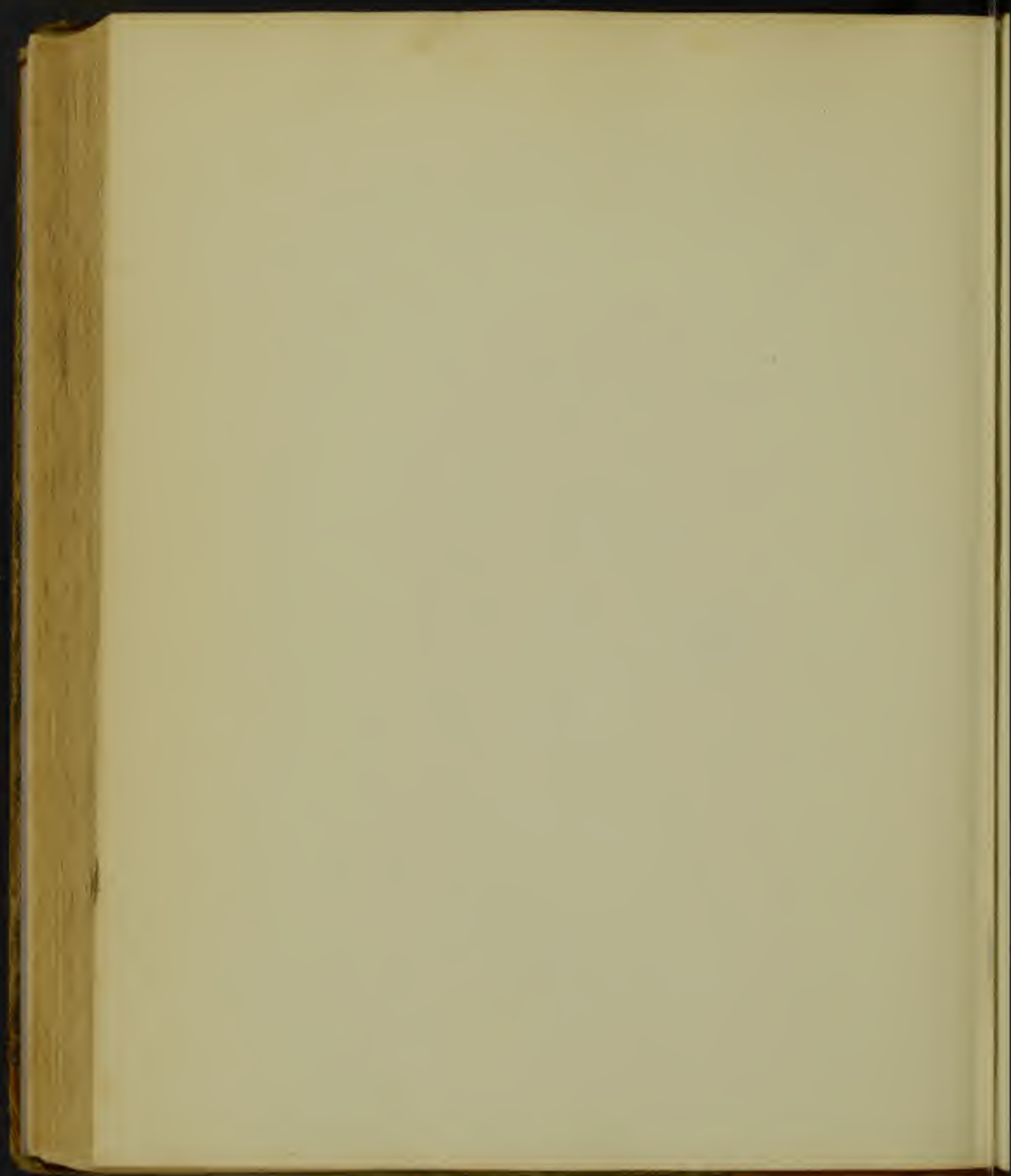
no Bar. 271. In epistle has no other lie - it seems the there be no agreement

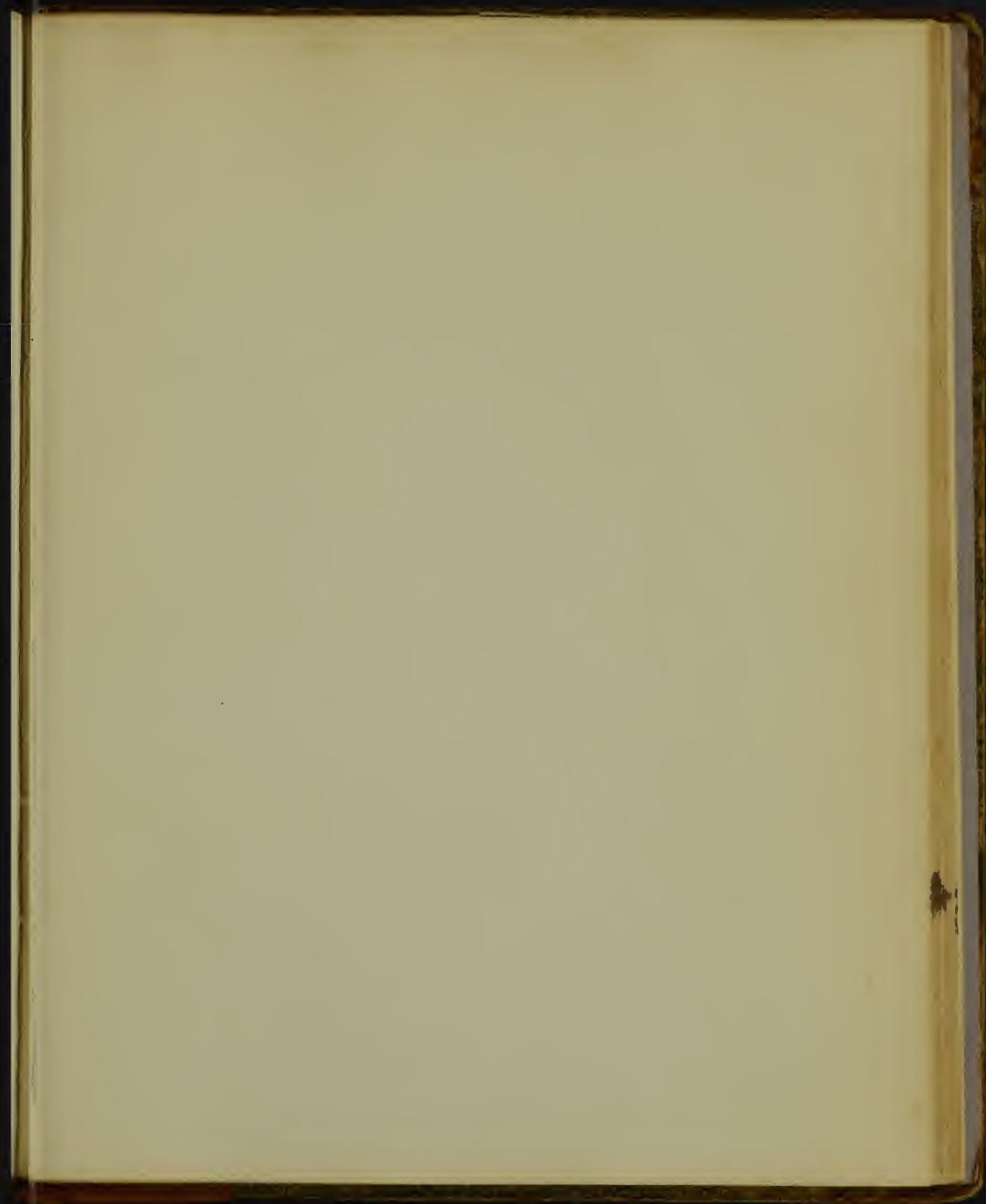




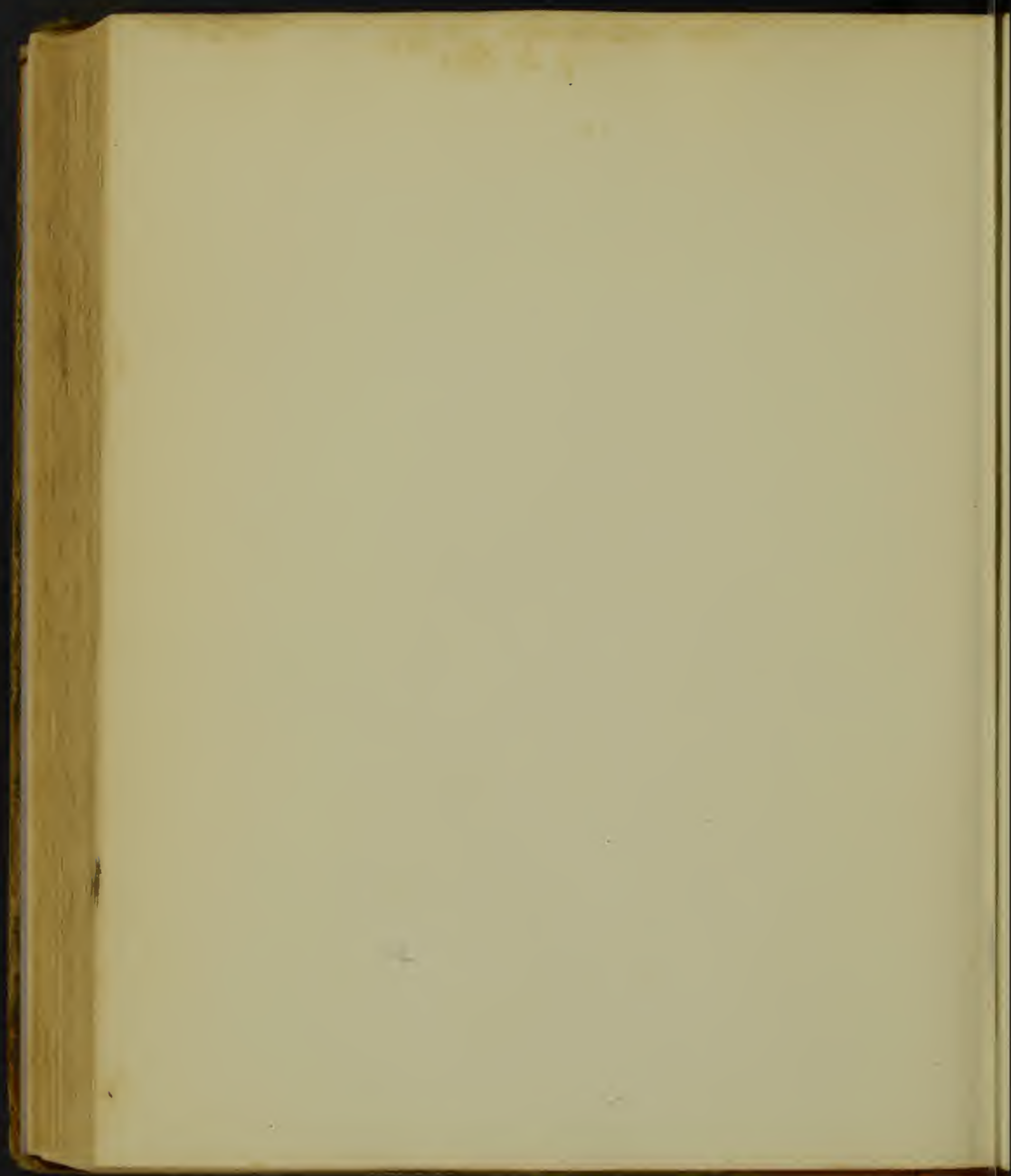


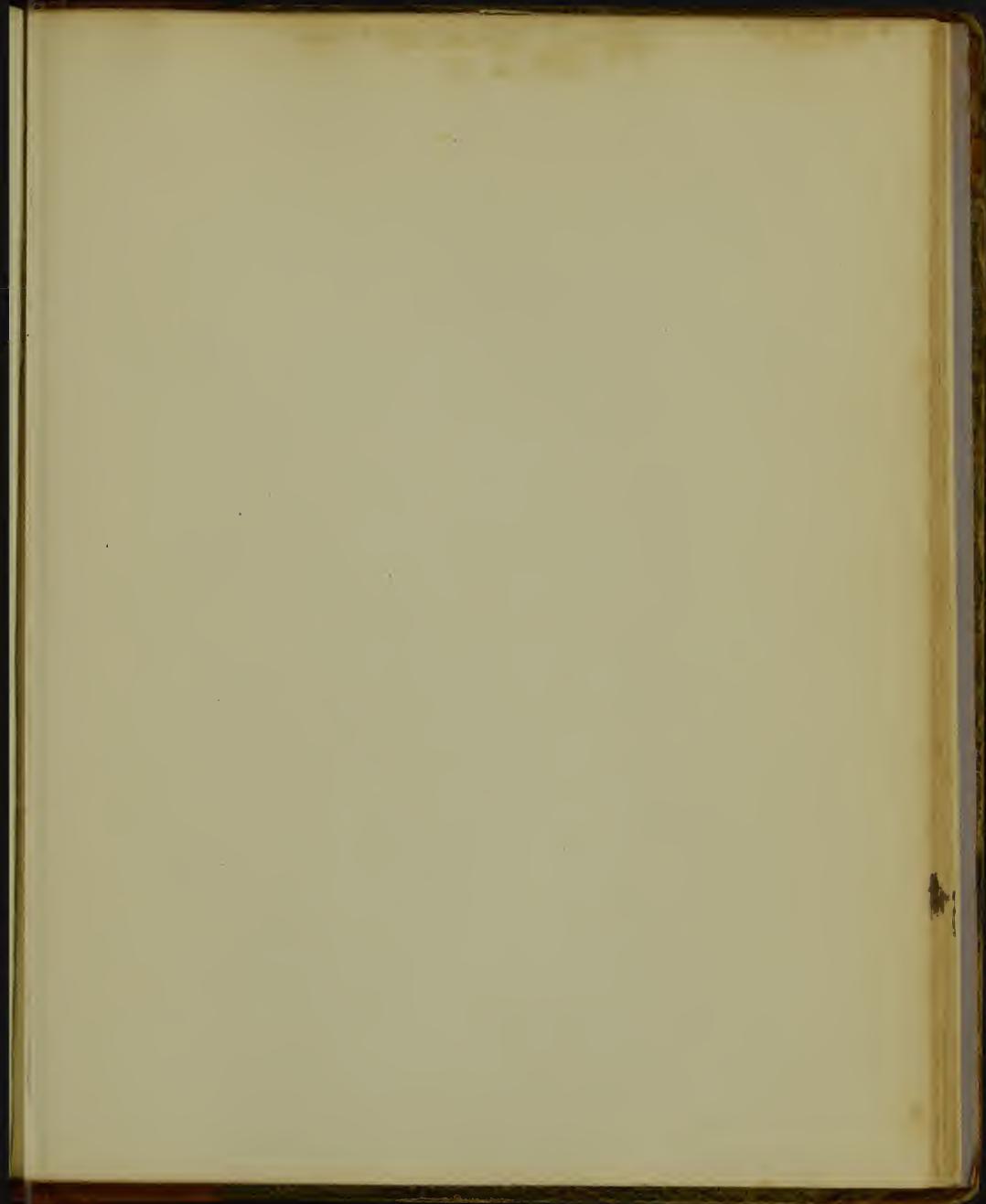


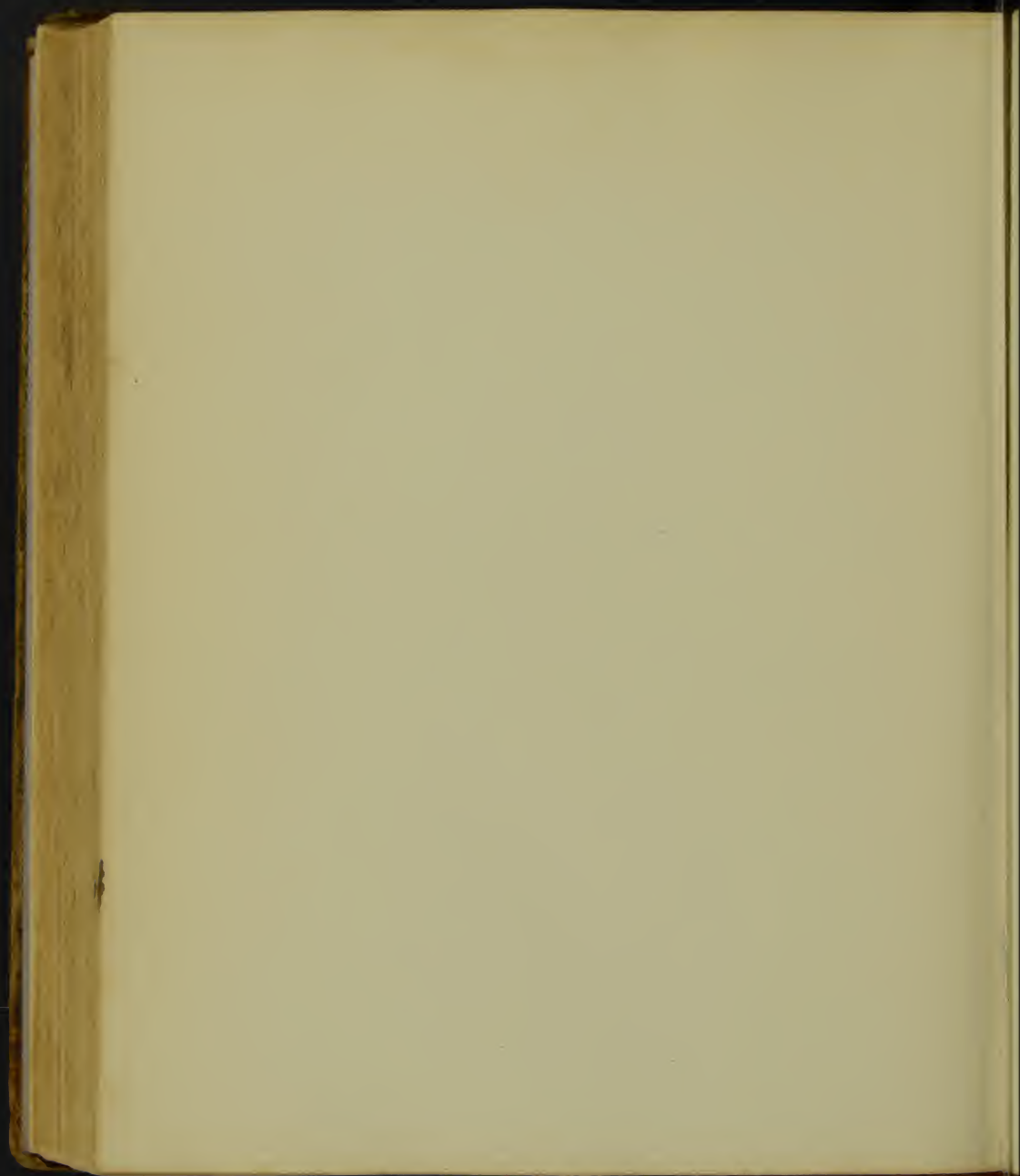


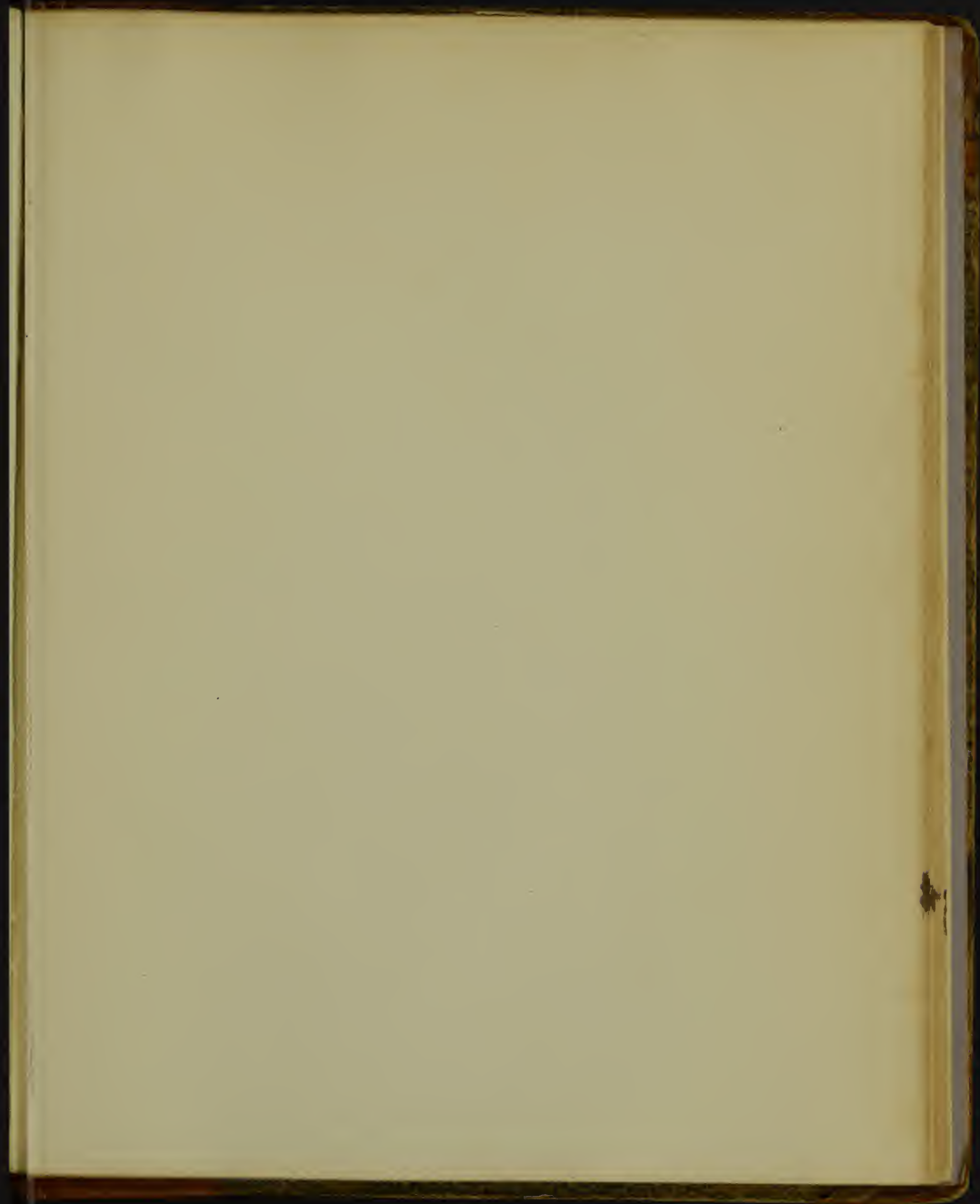




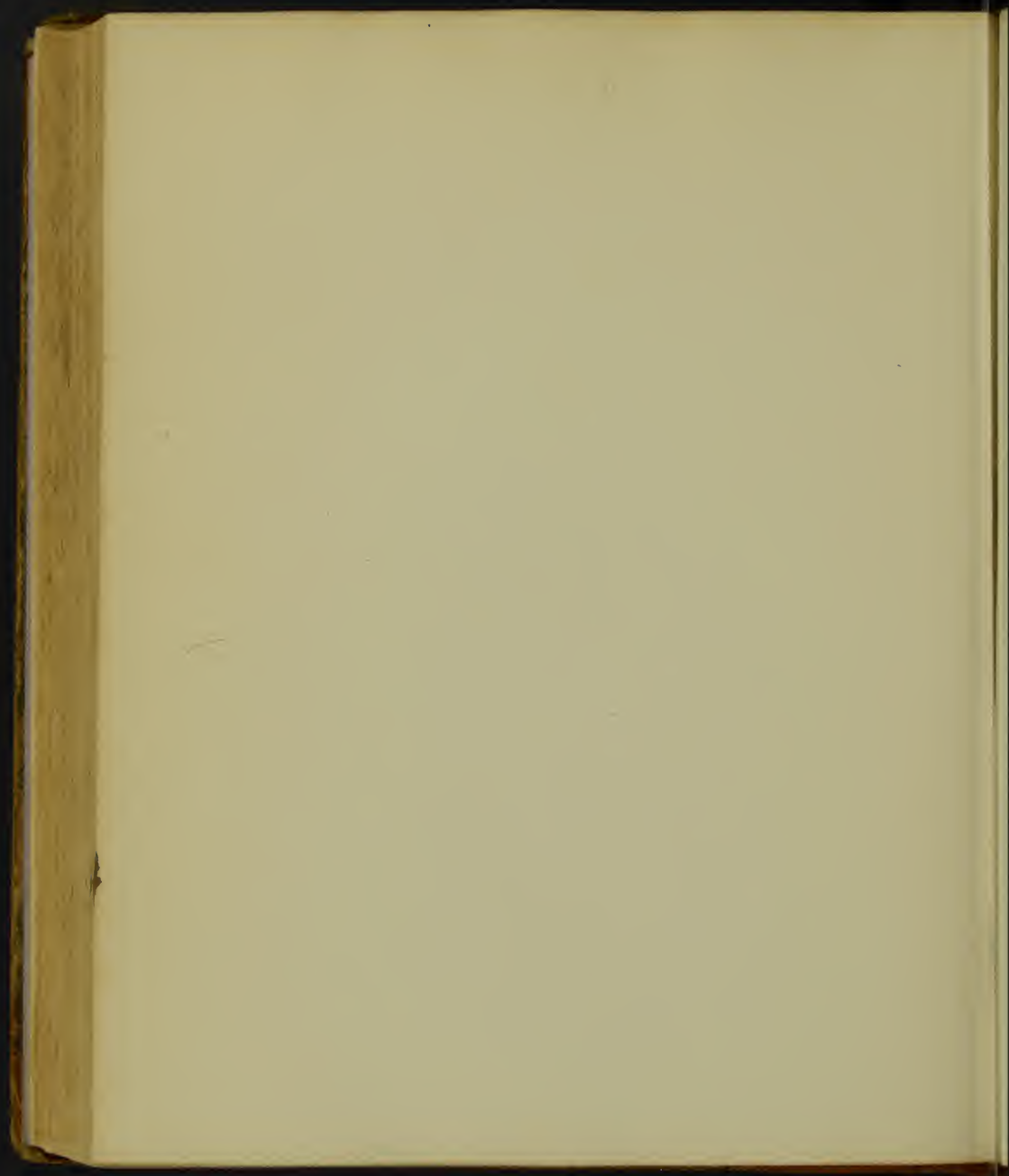


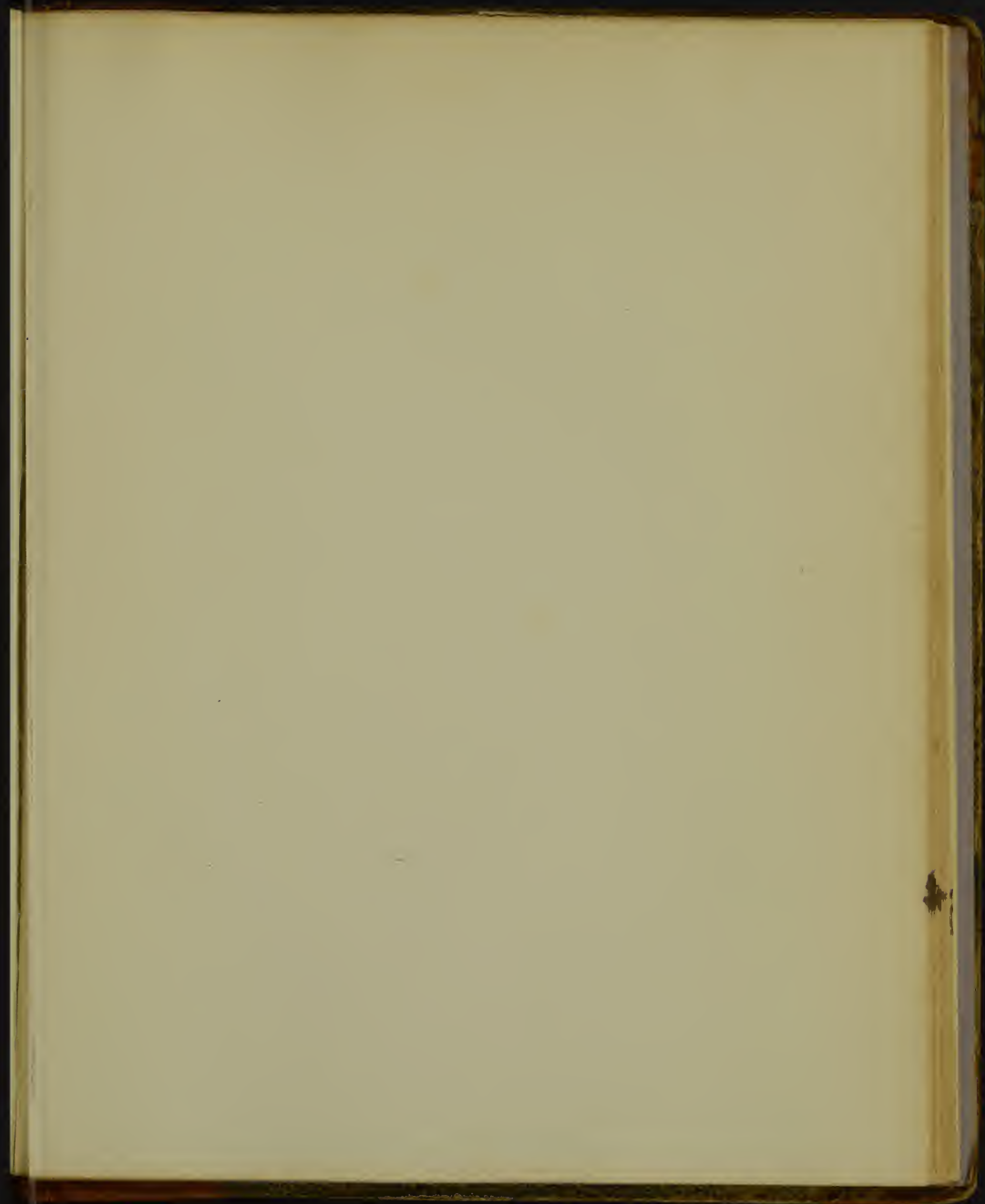


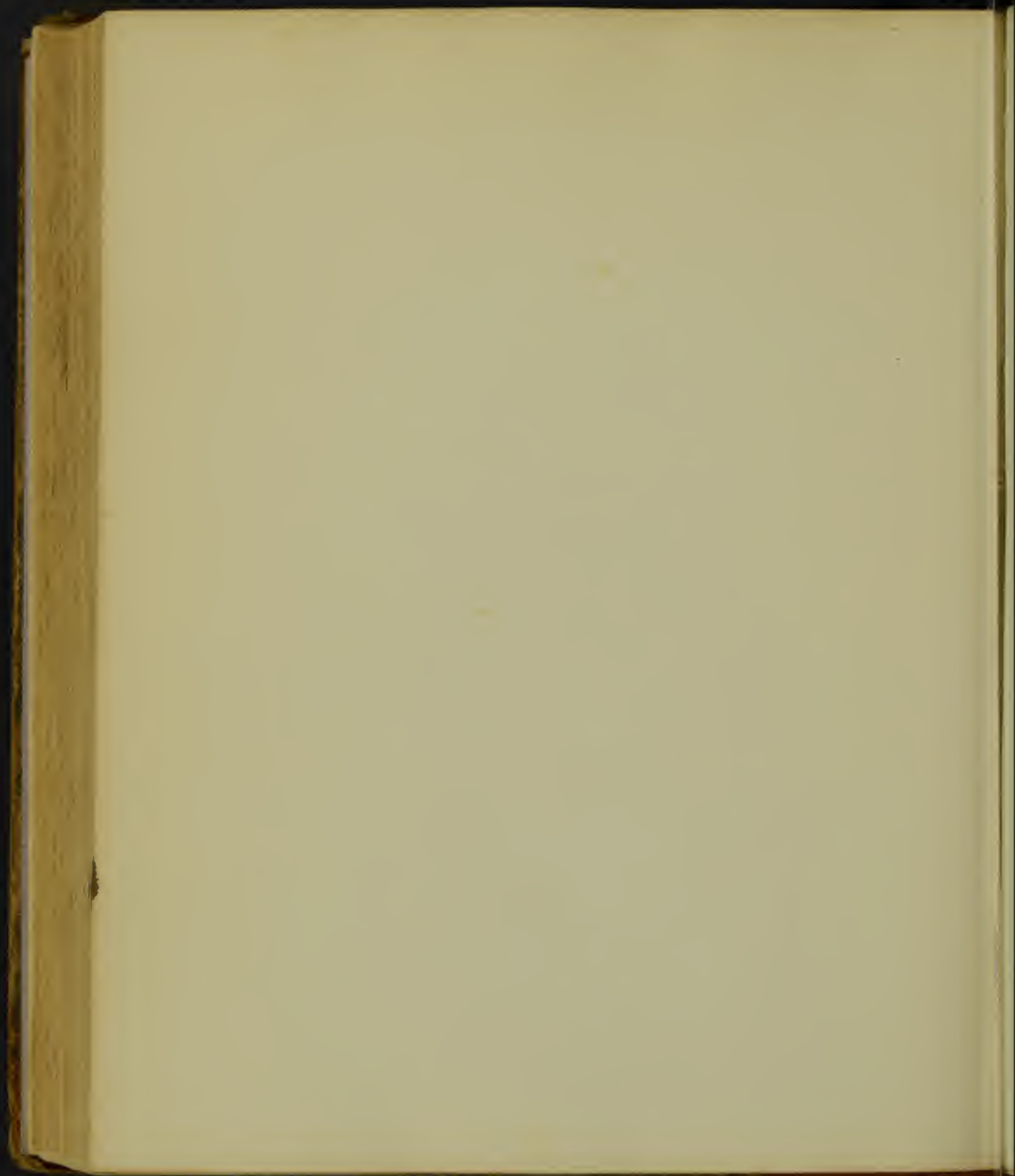


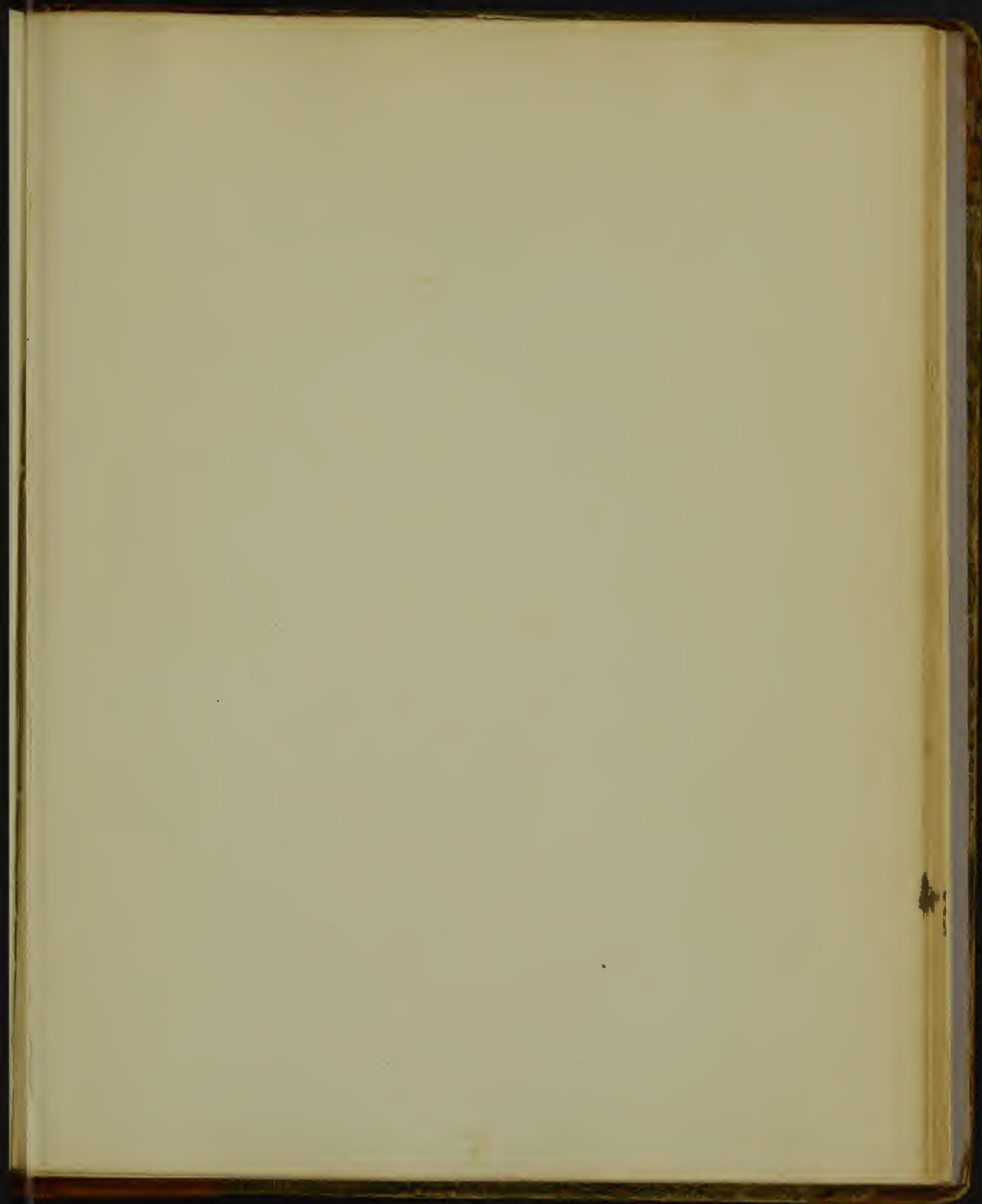




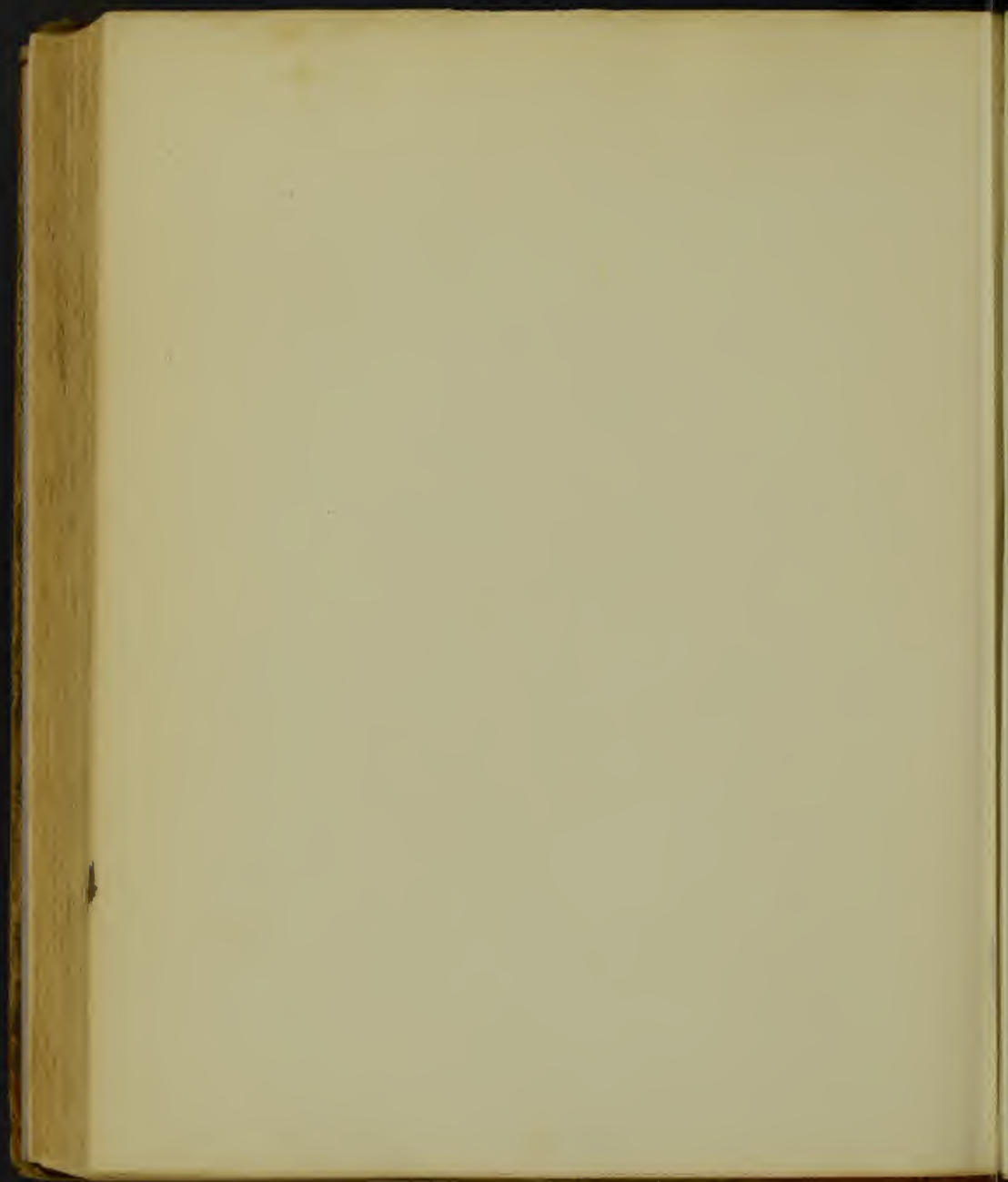


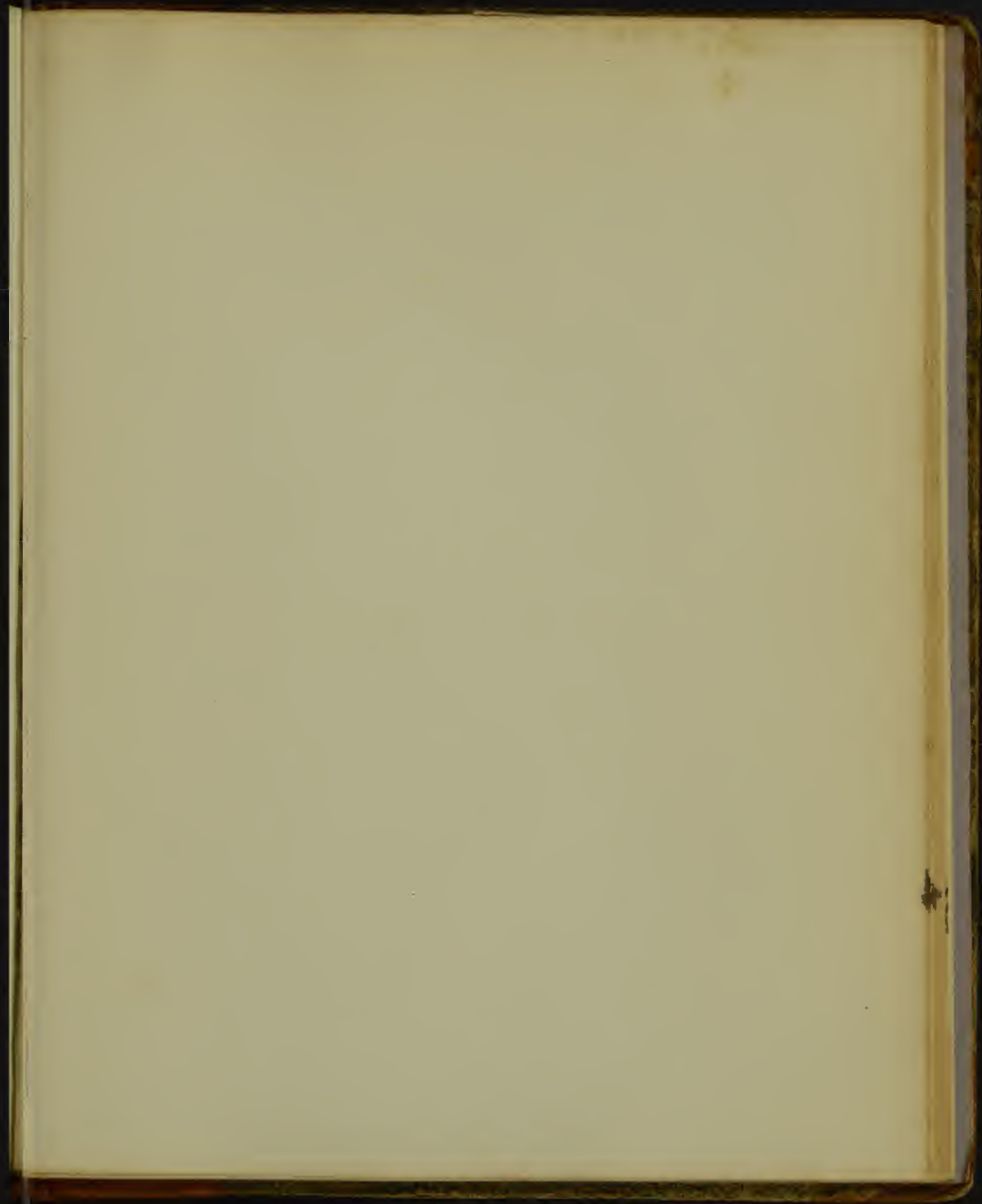


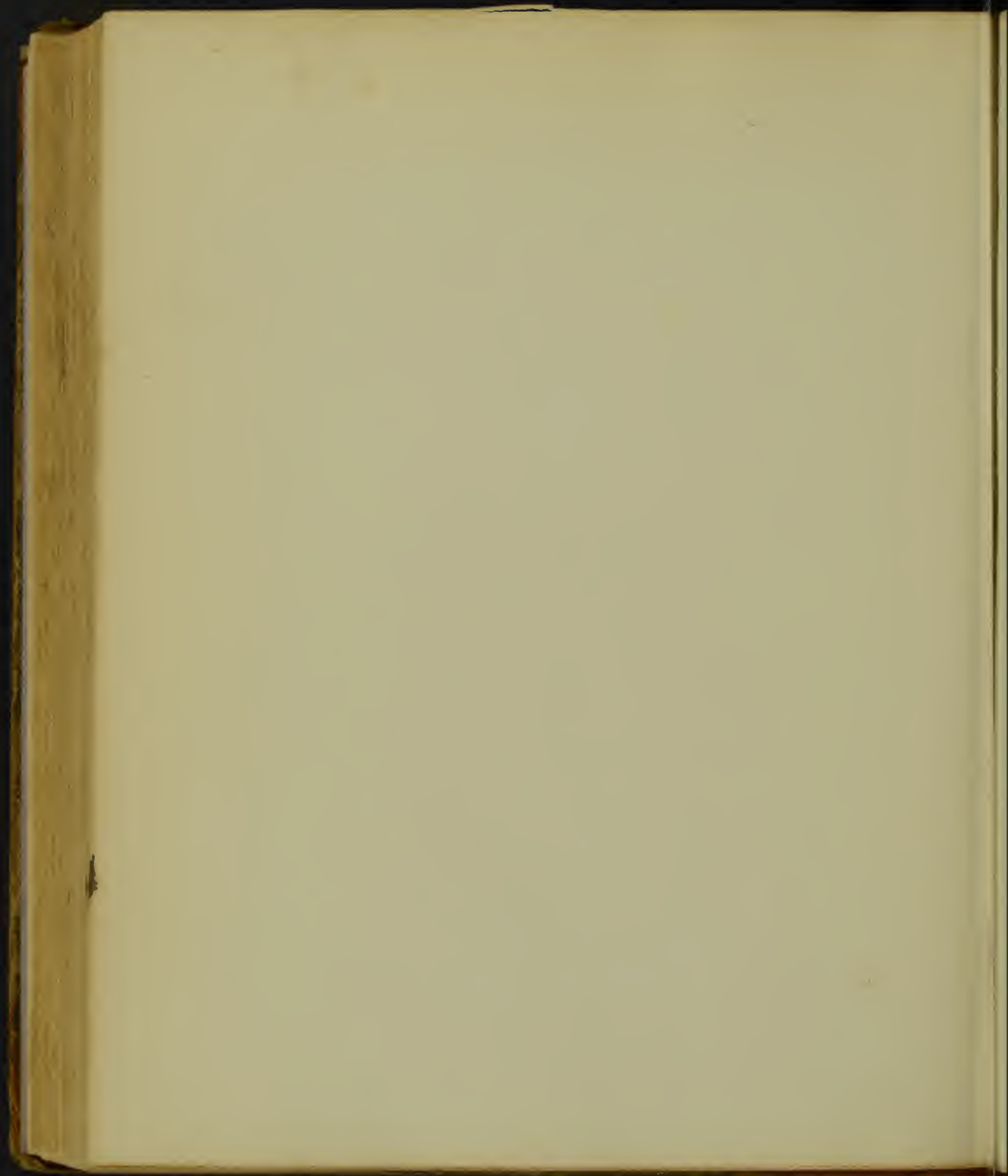


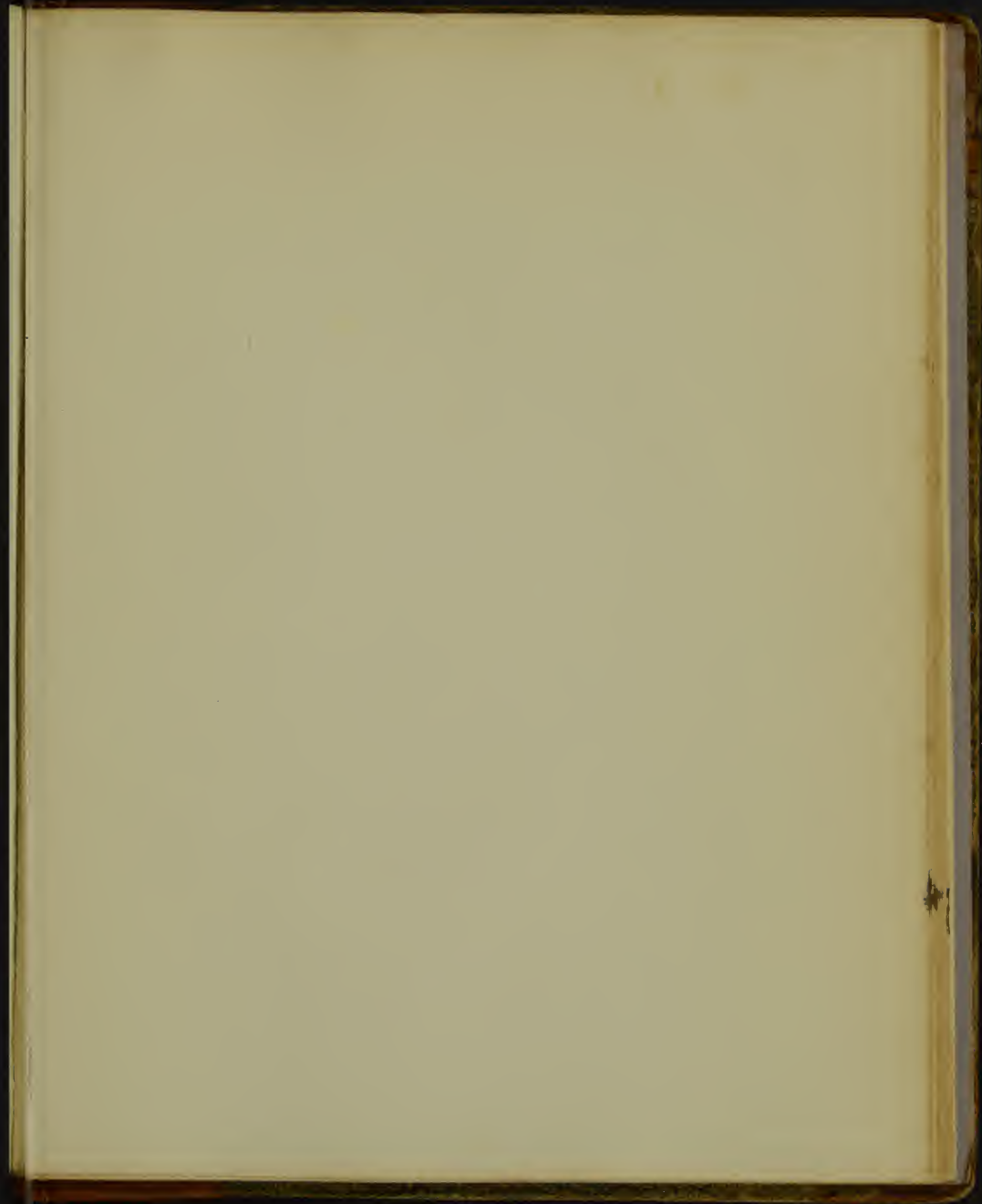




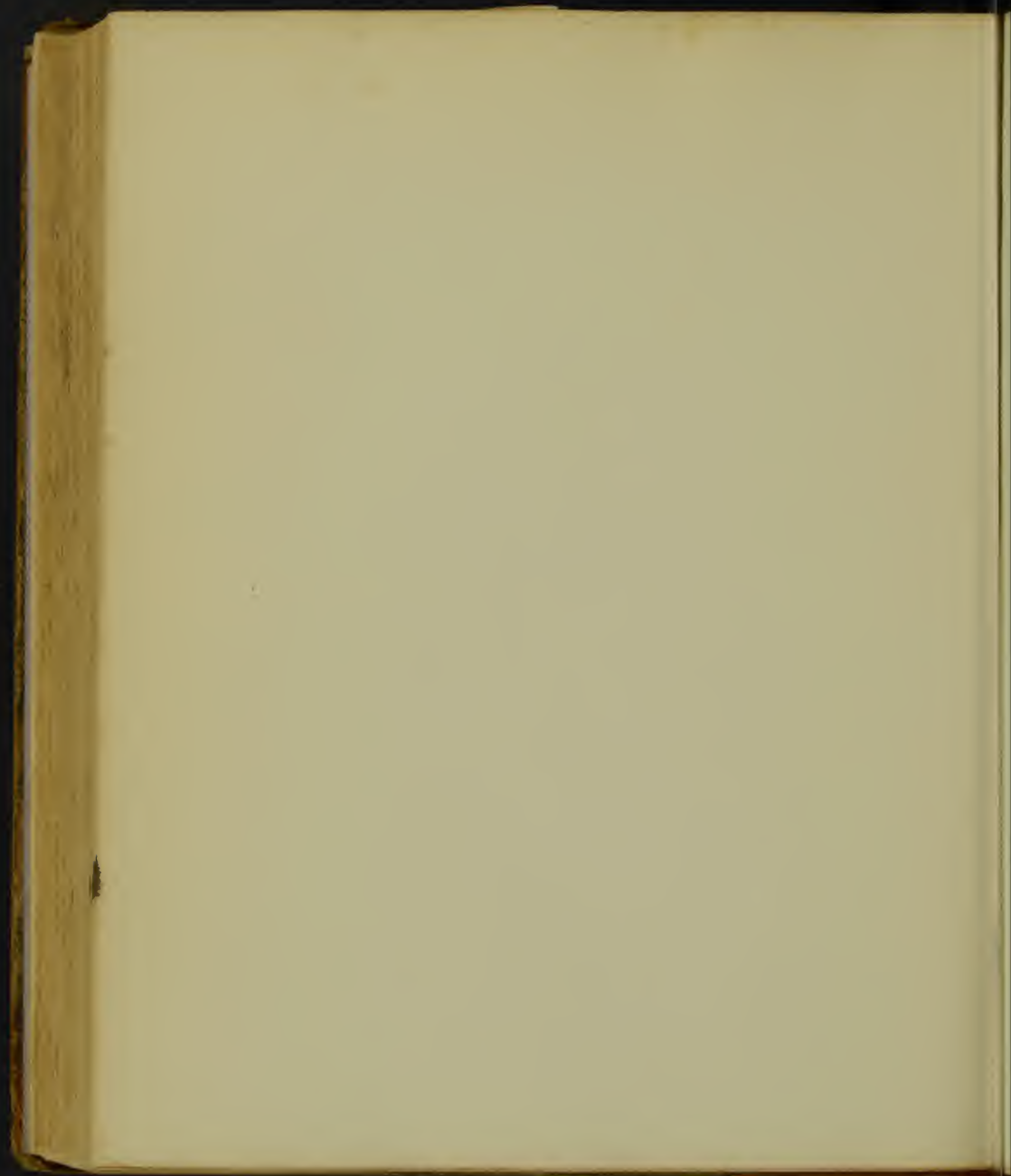


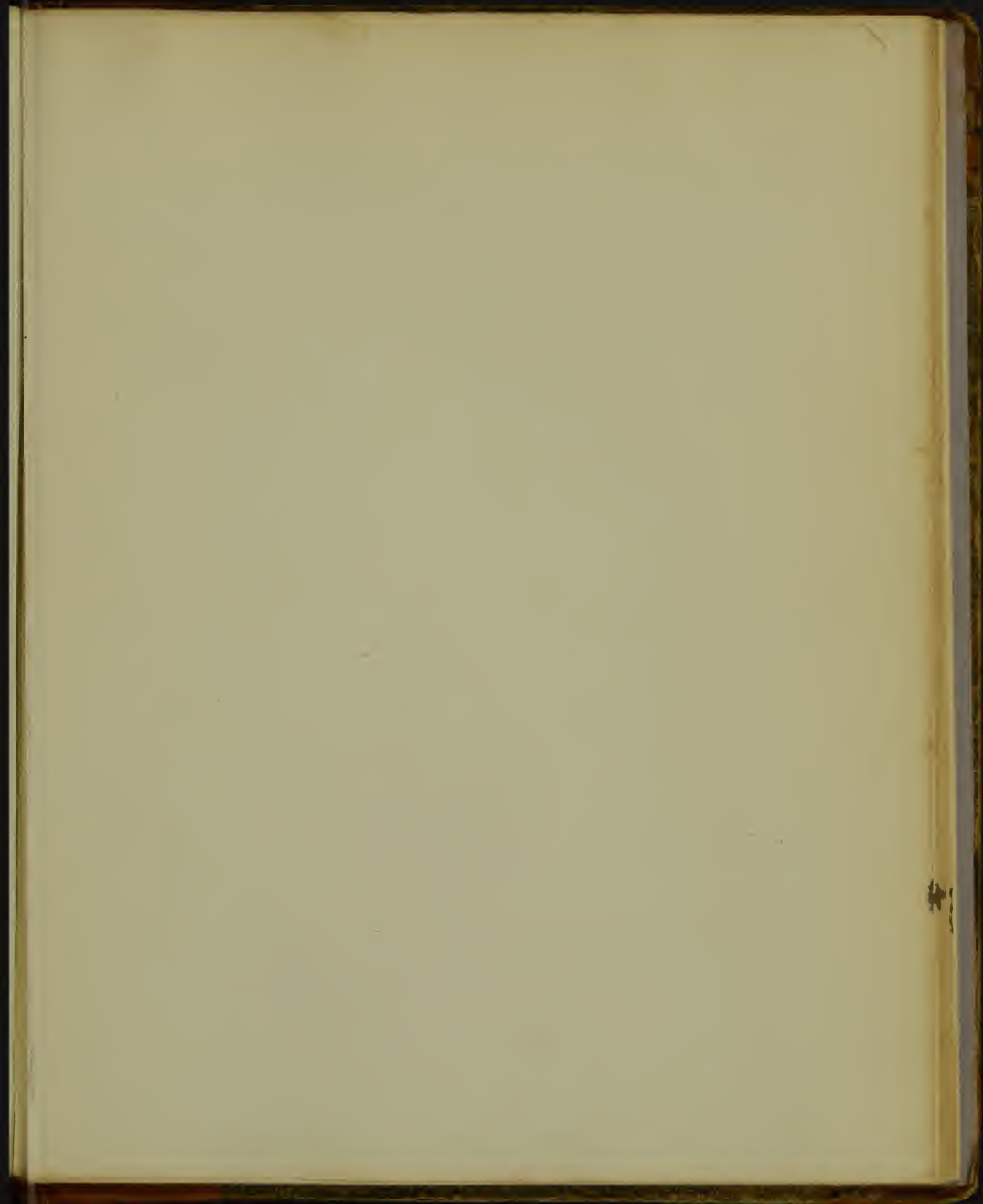


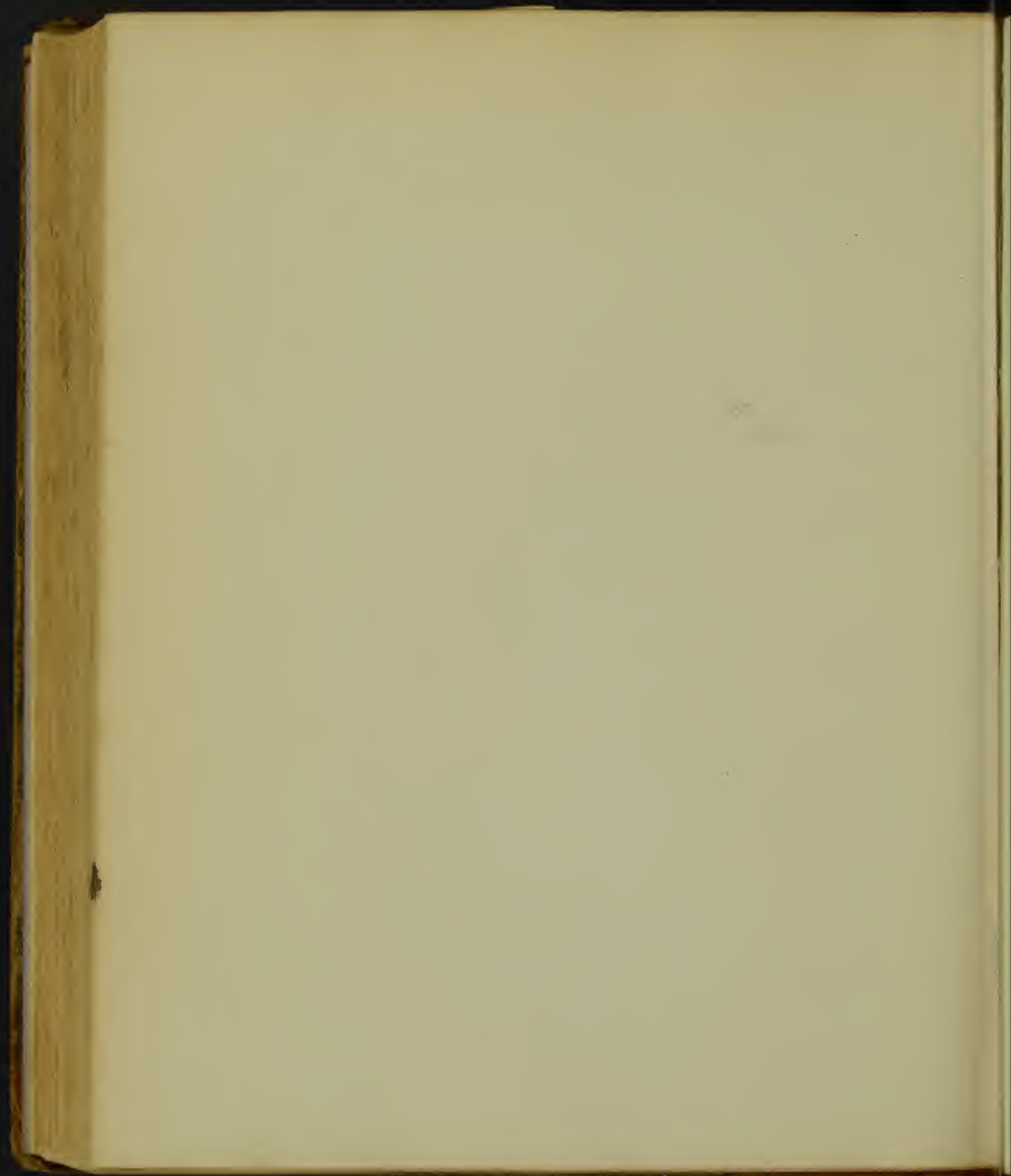


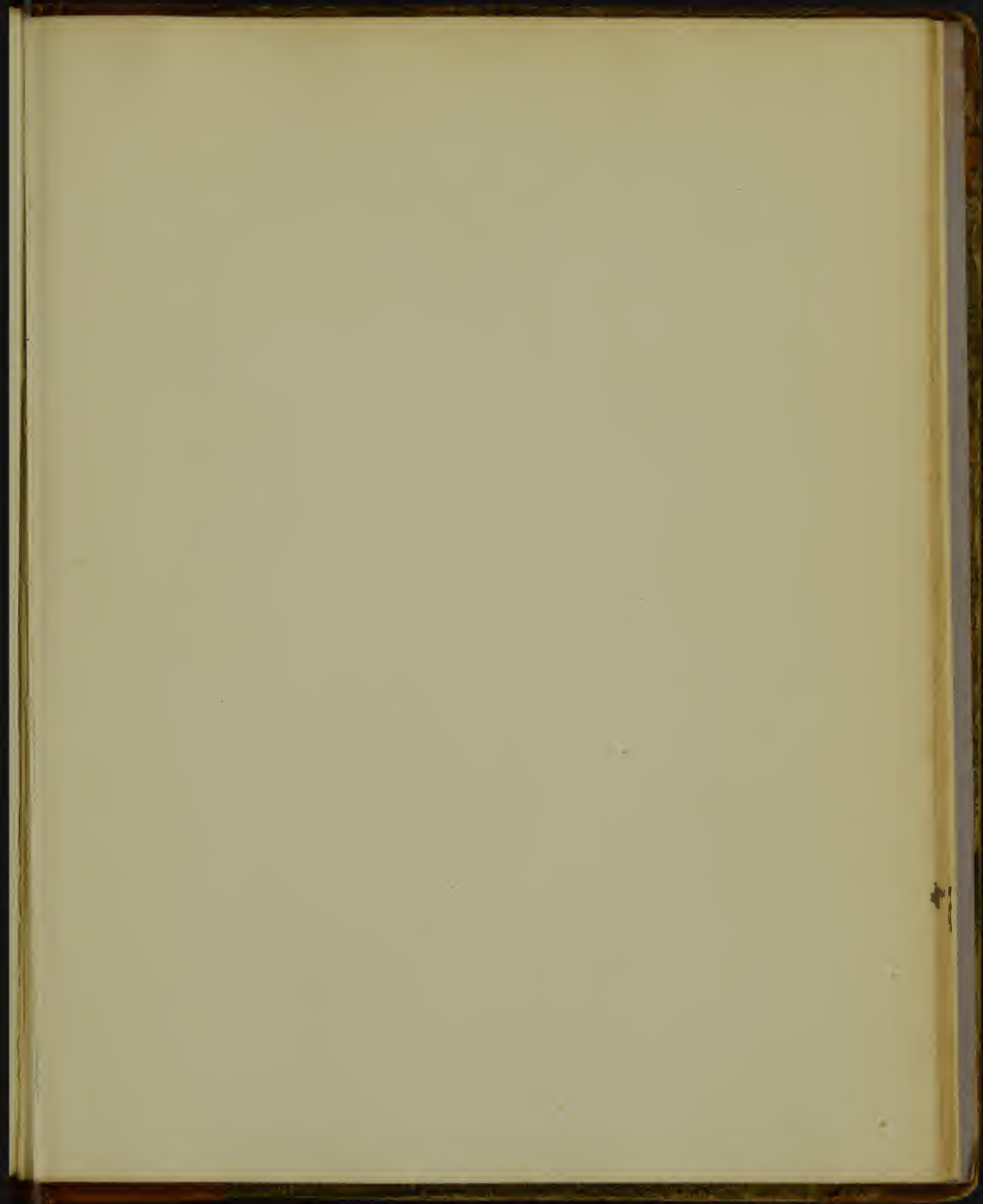




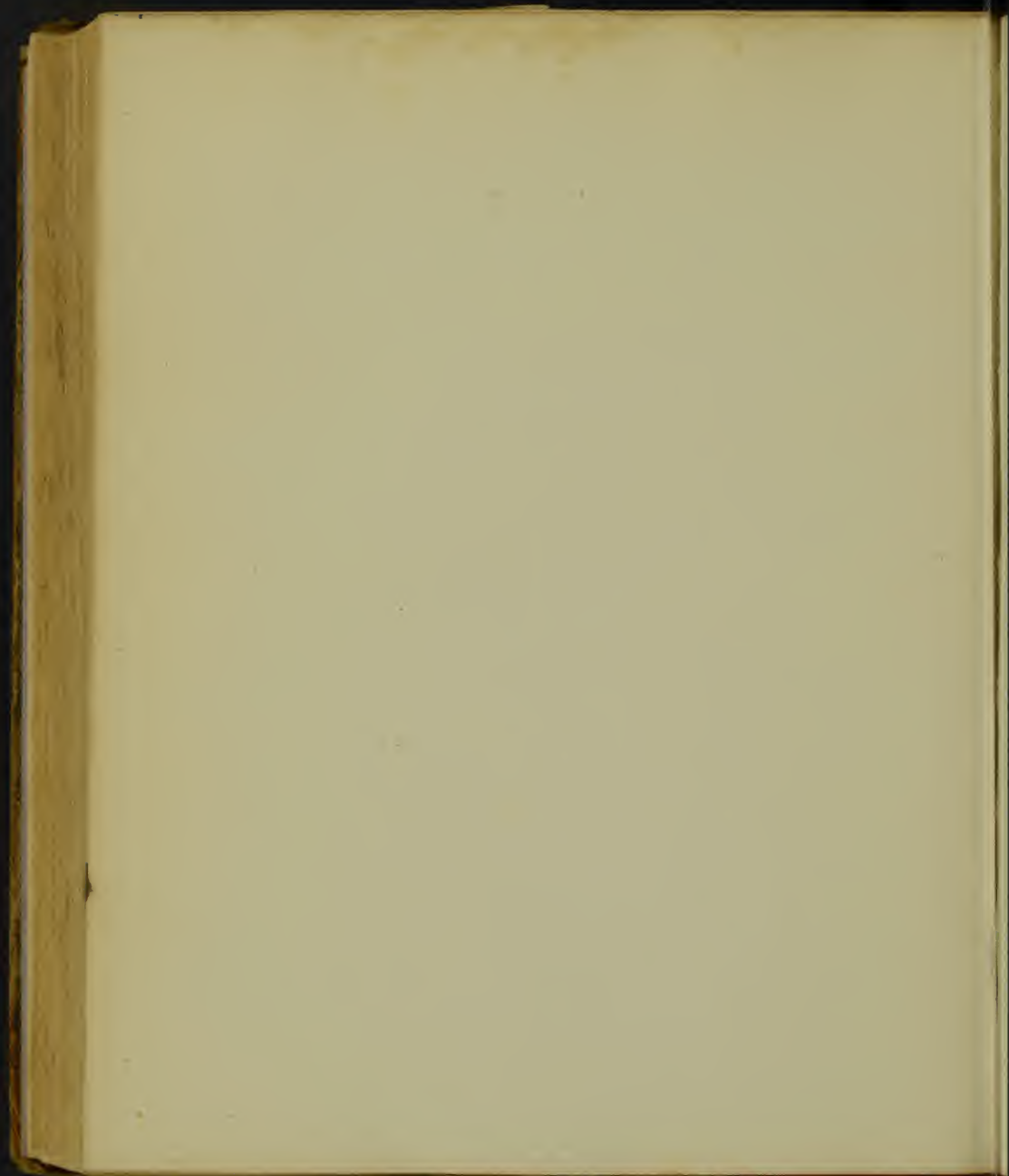


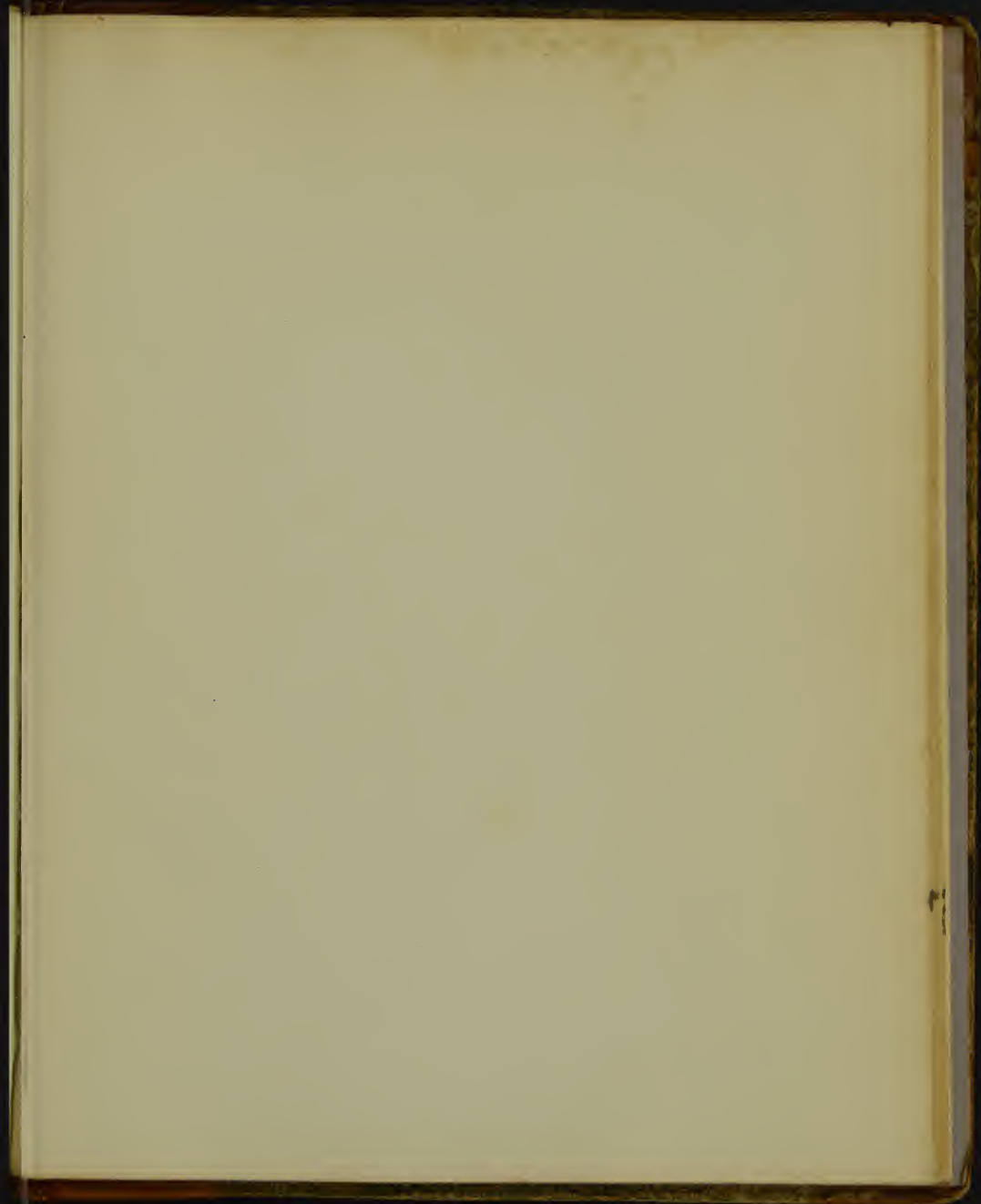


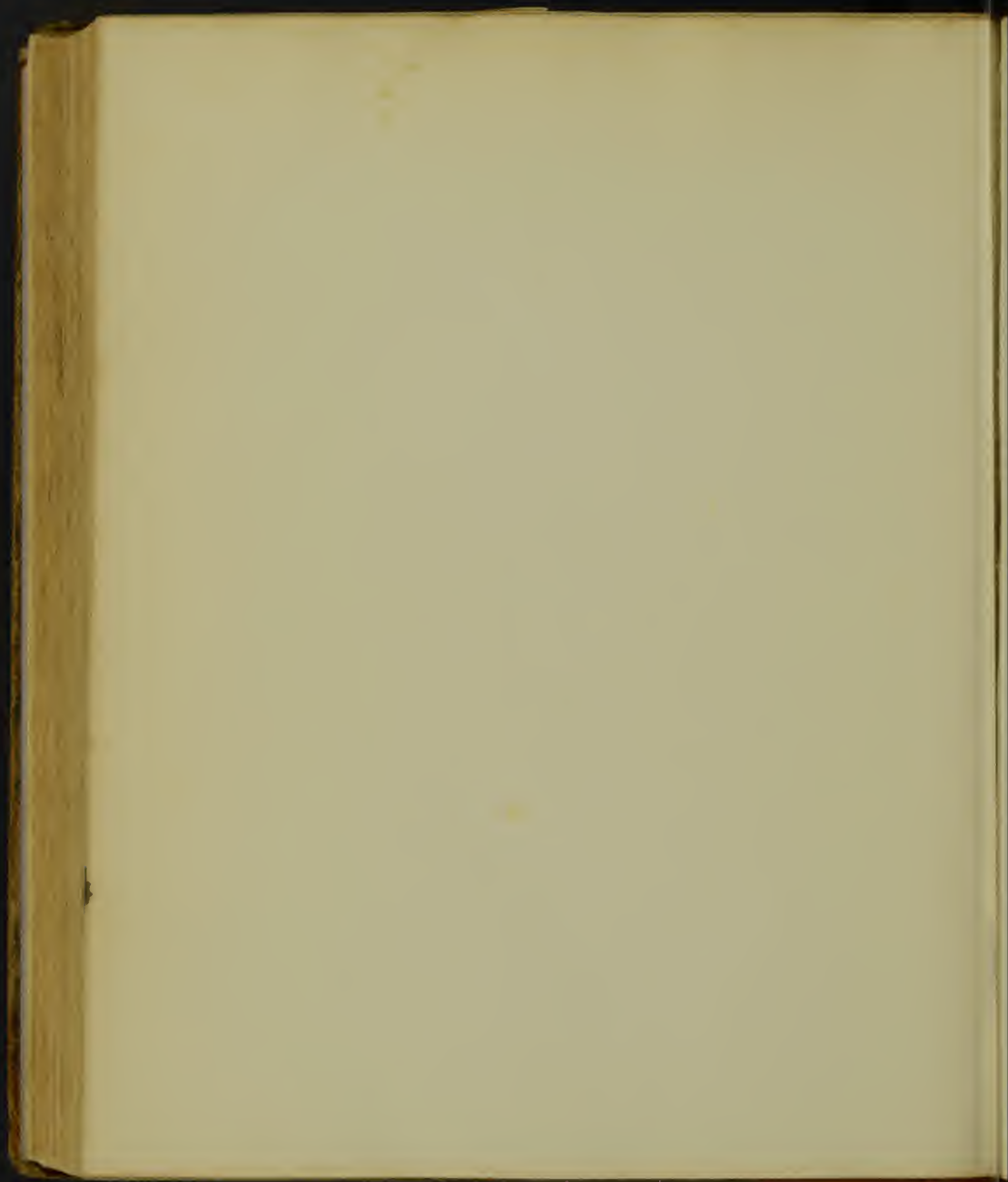


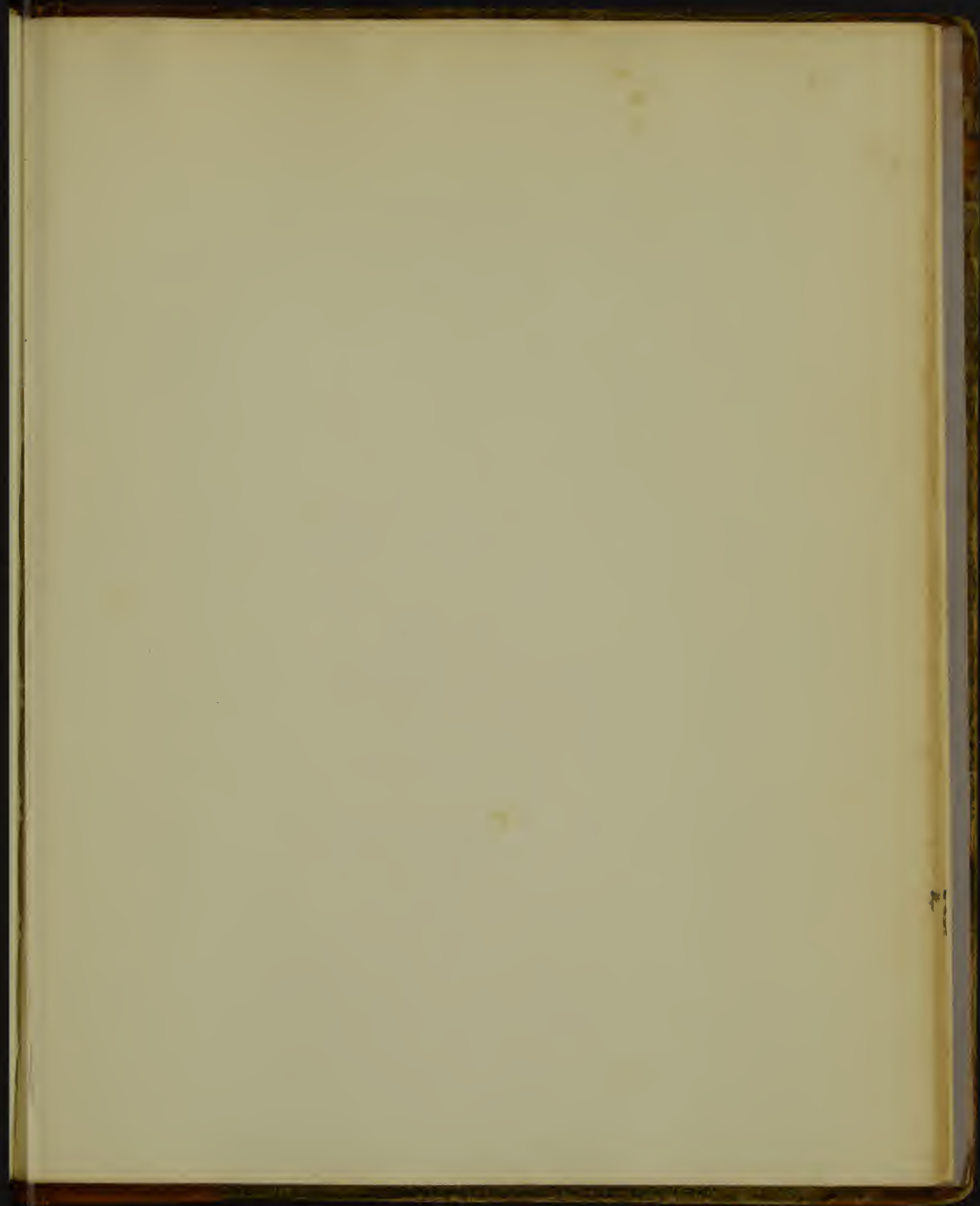




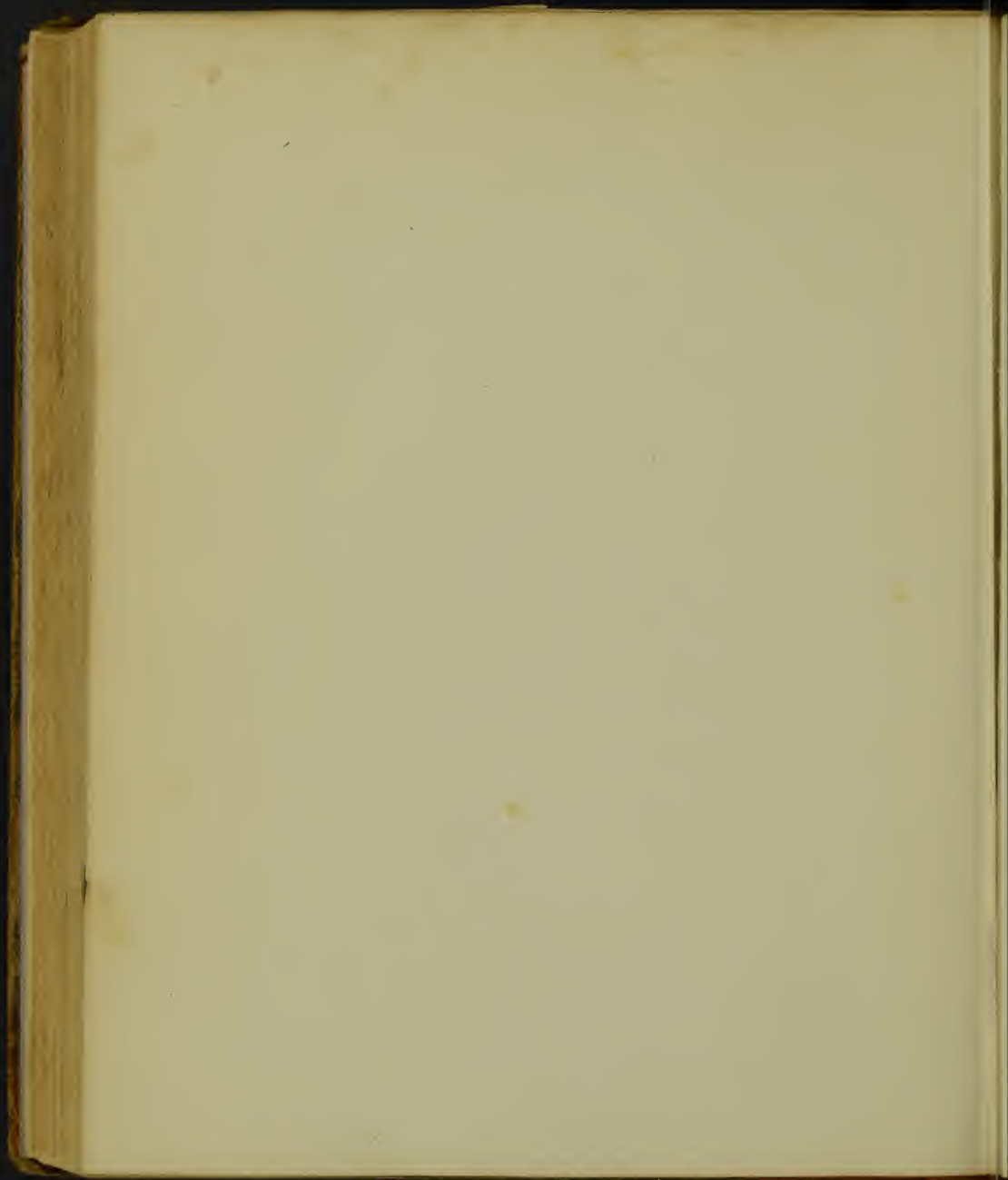


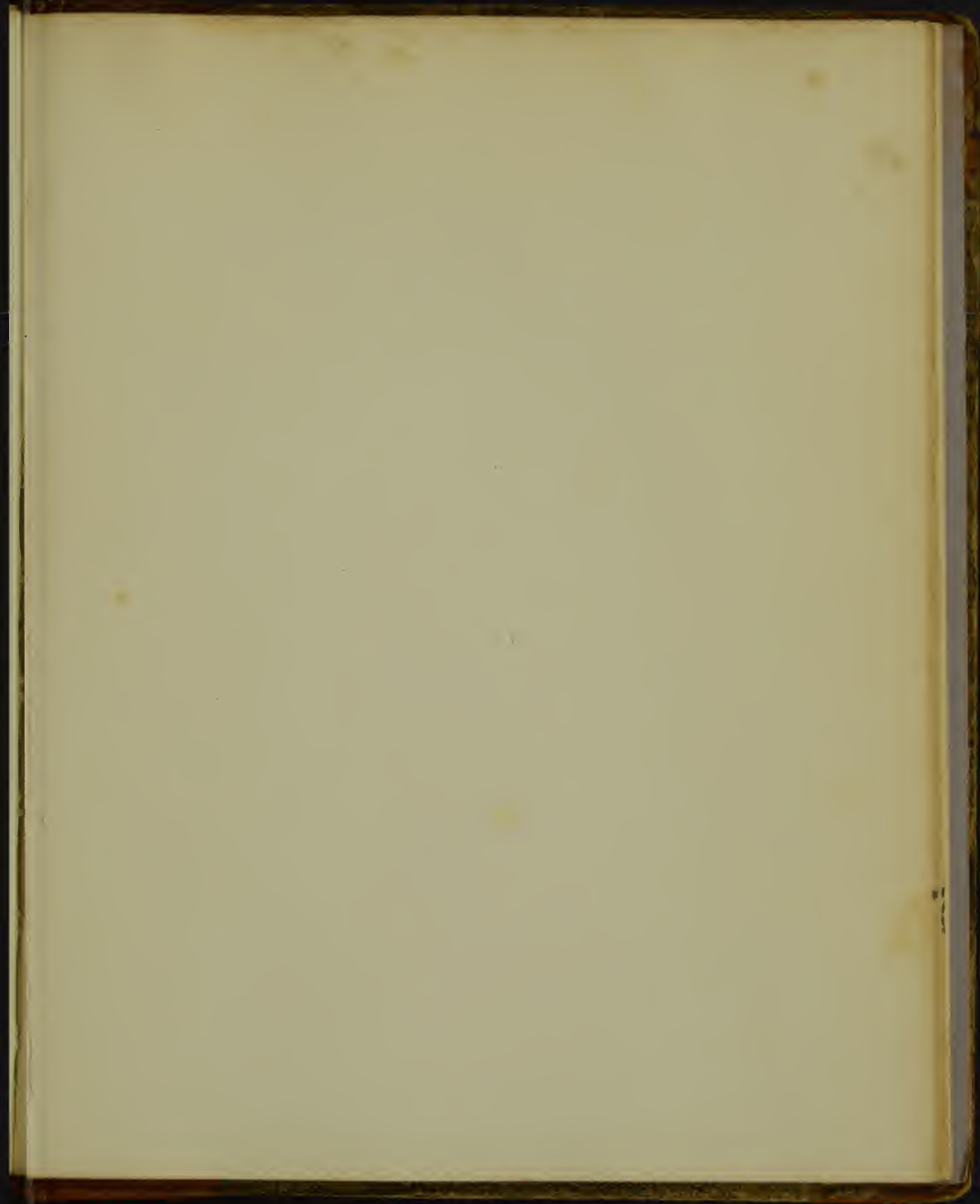


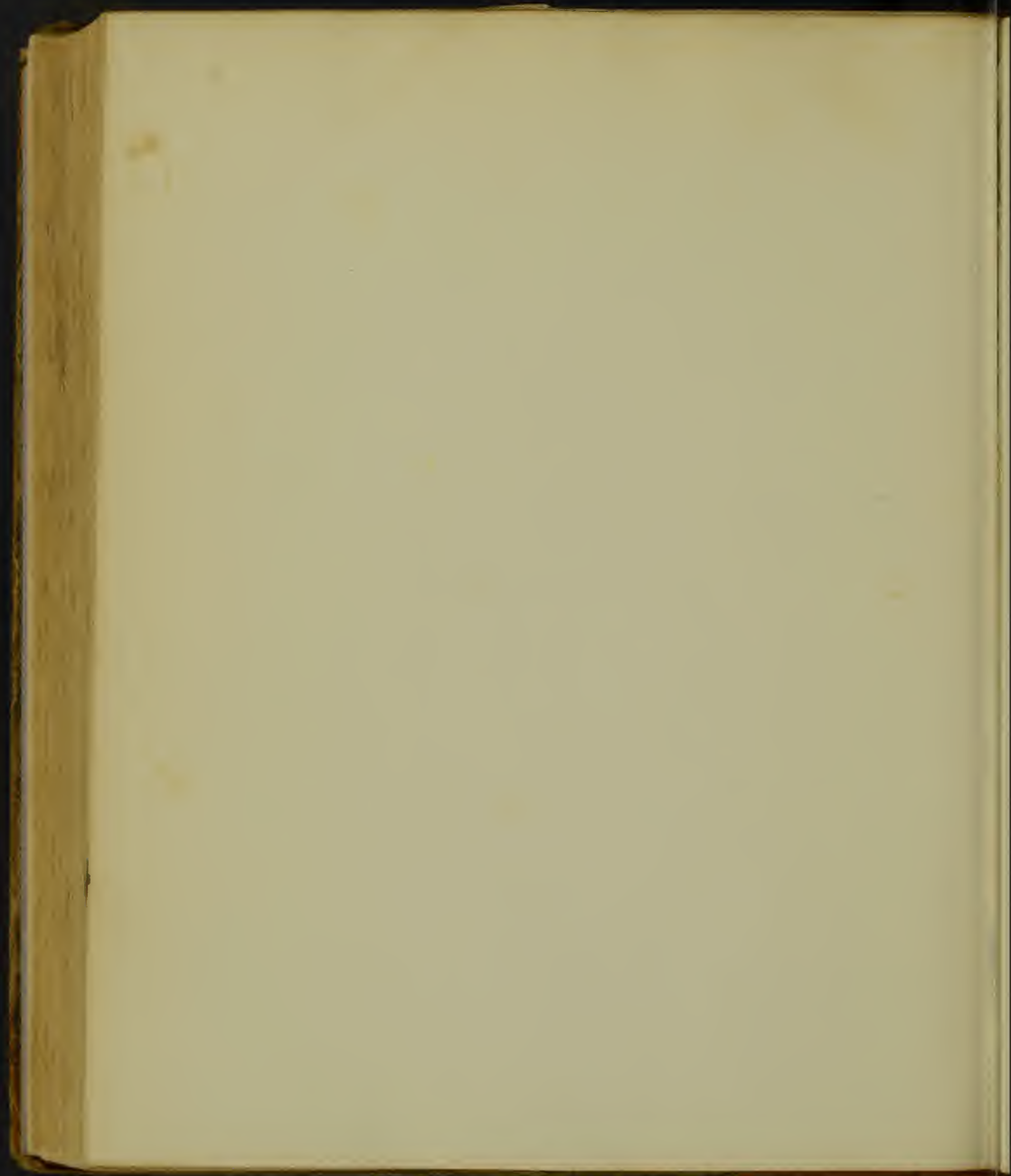


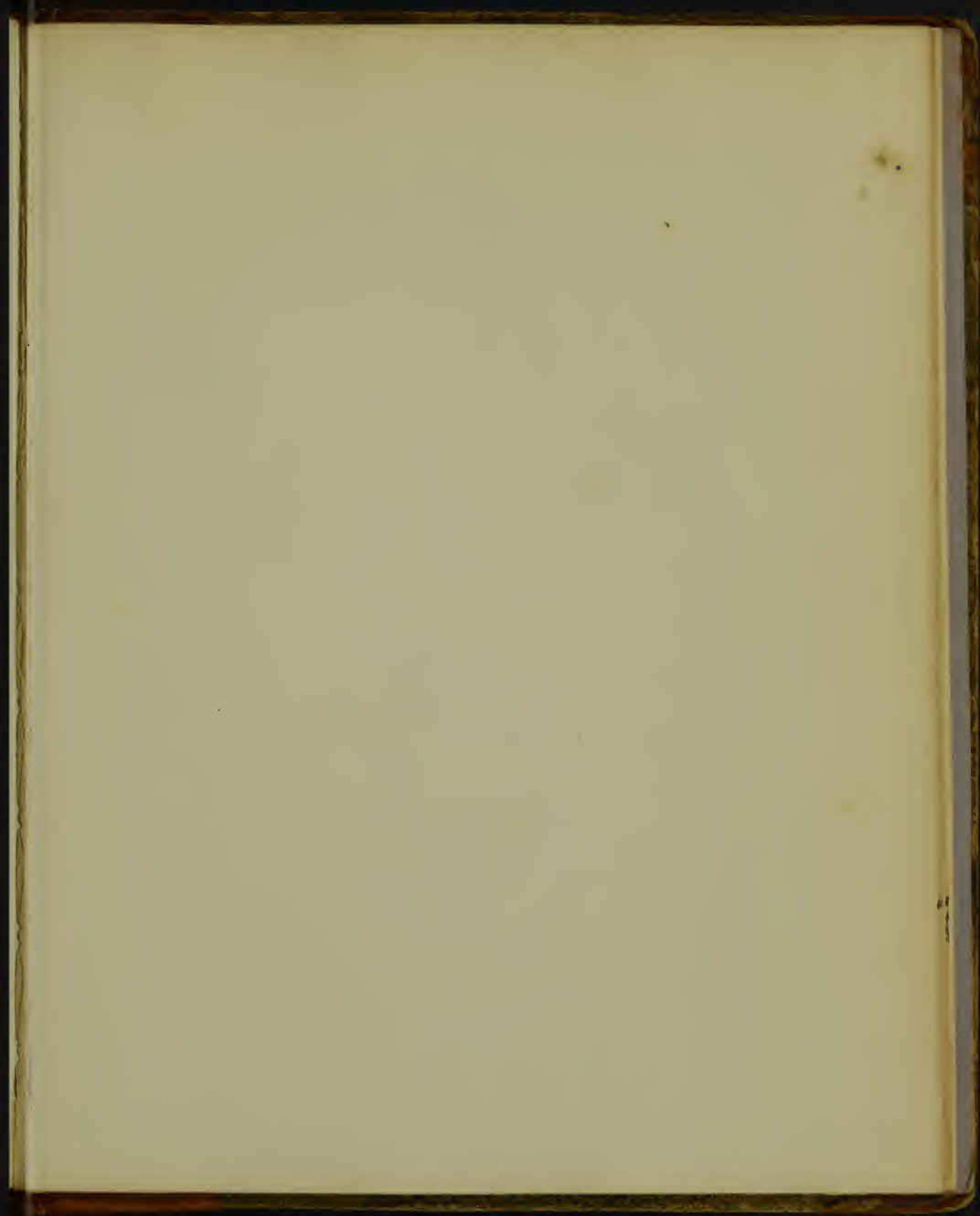




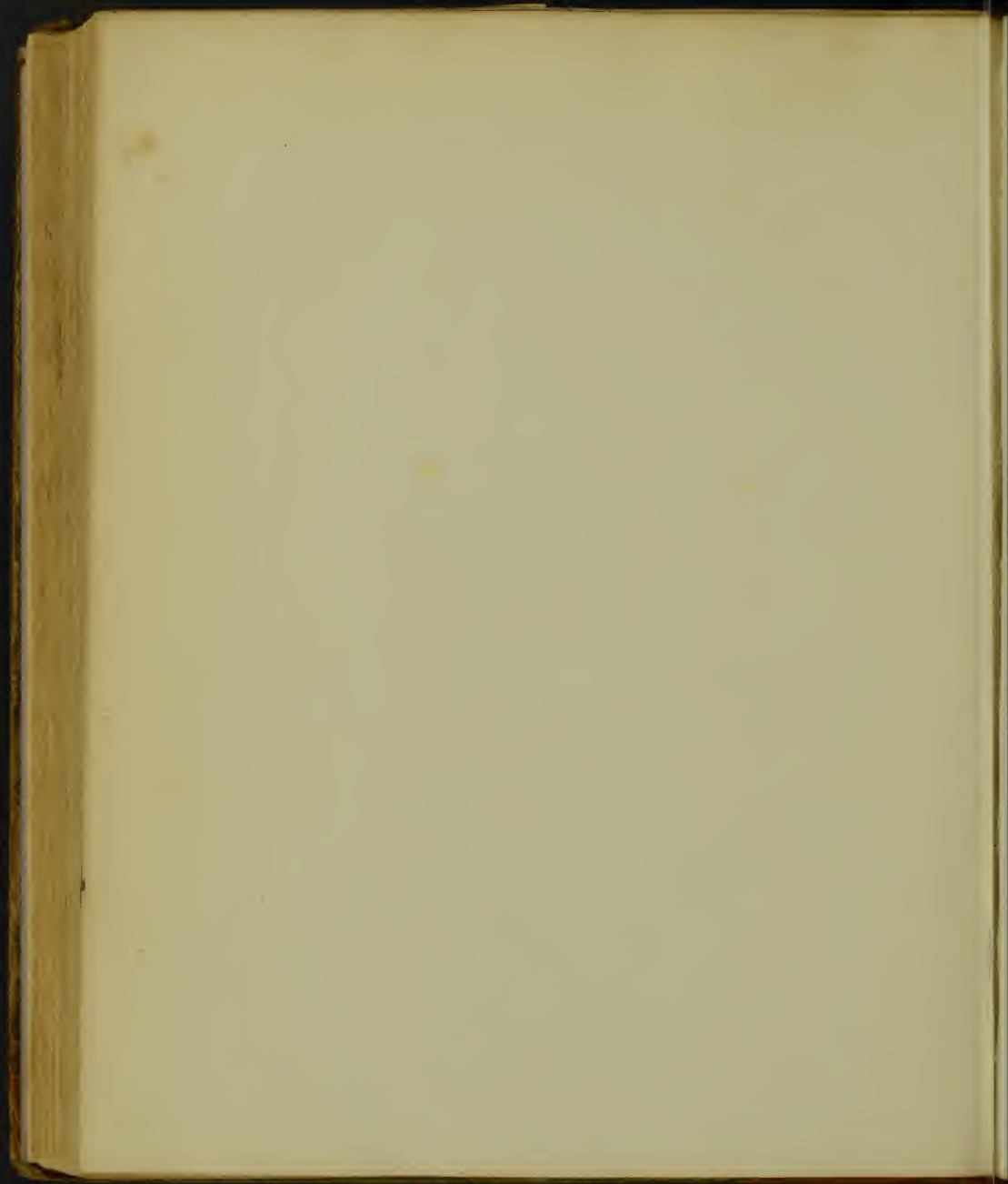


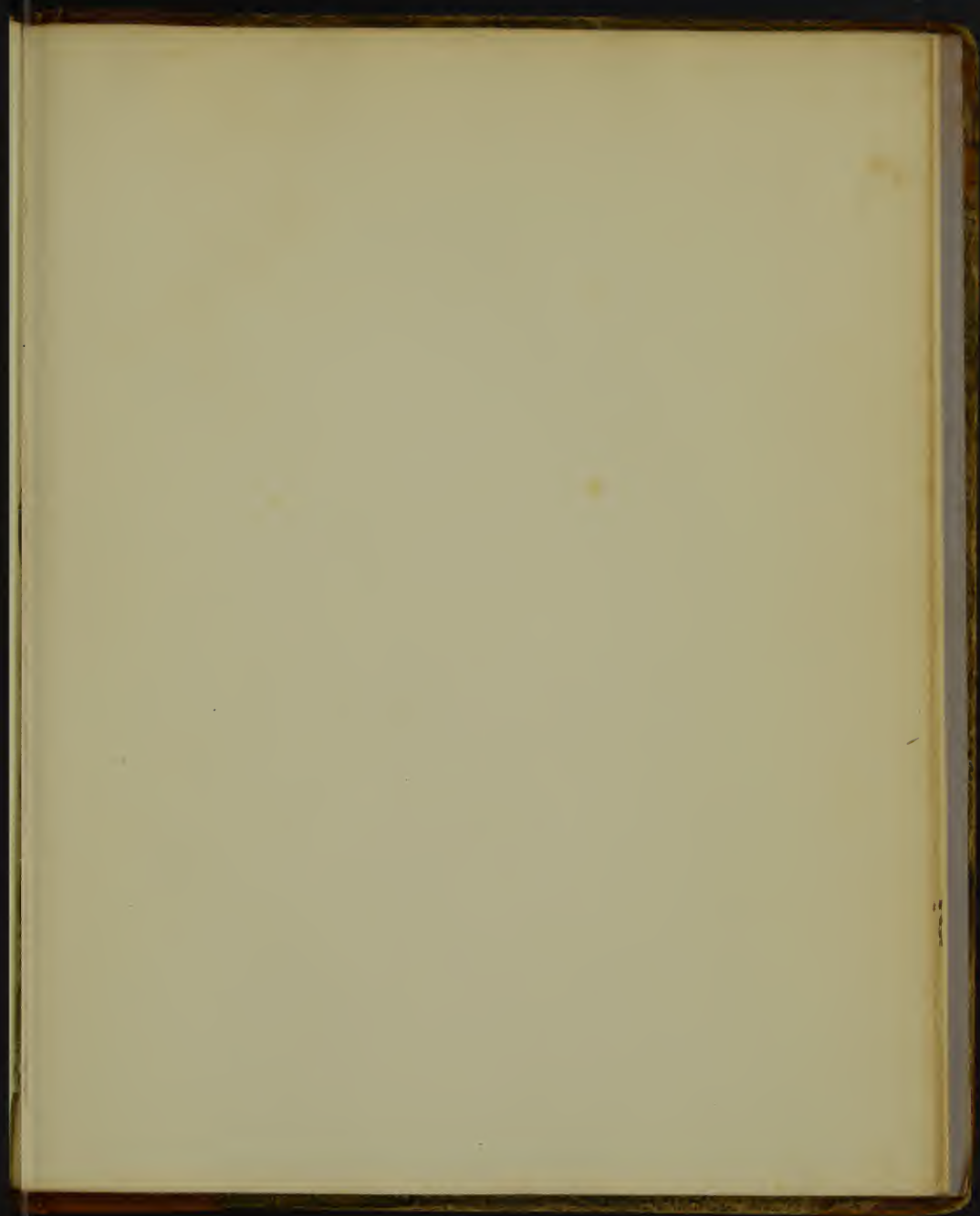


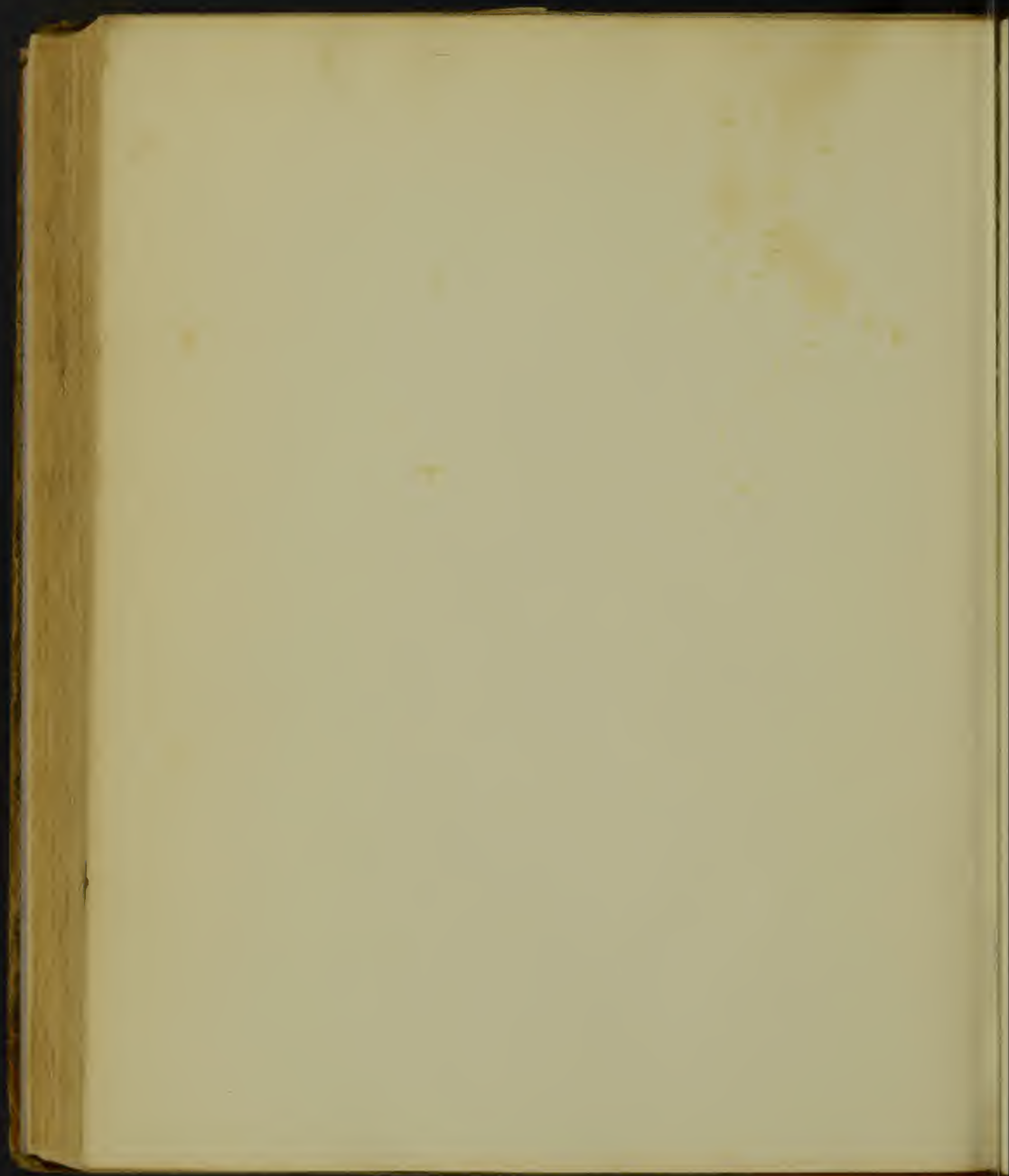


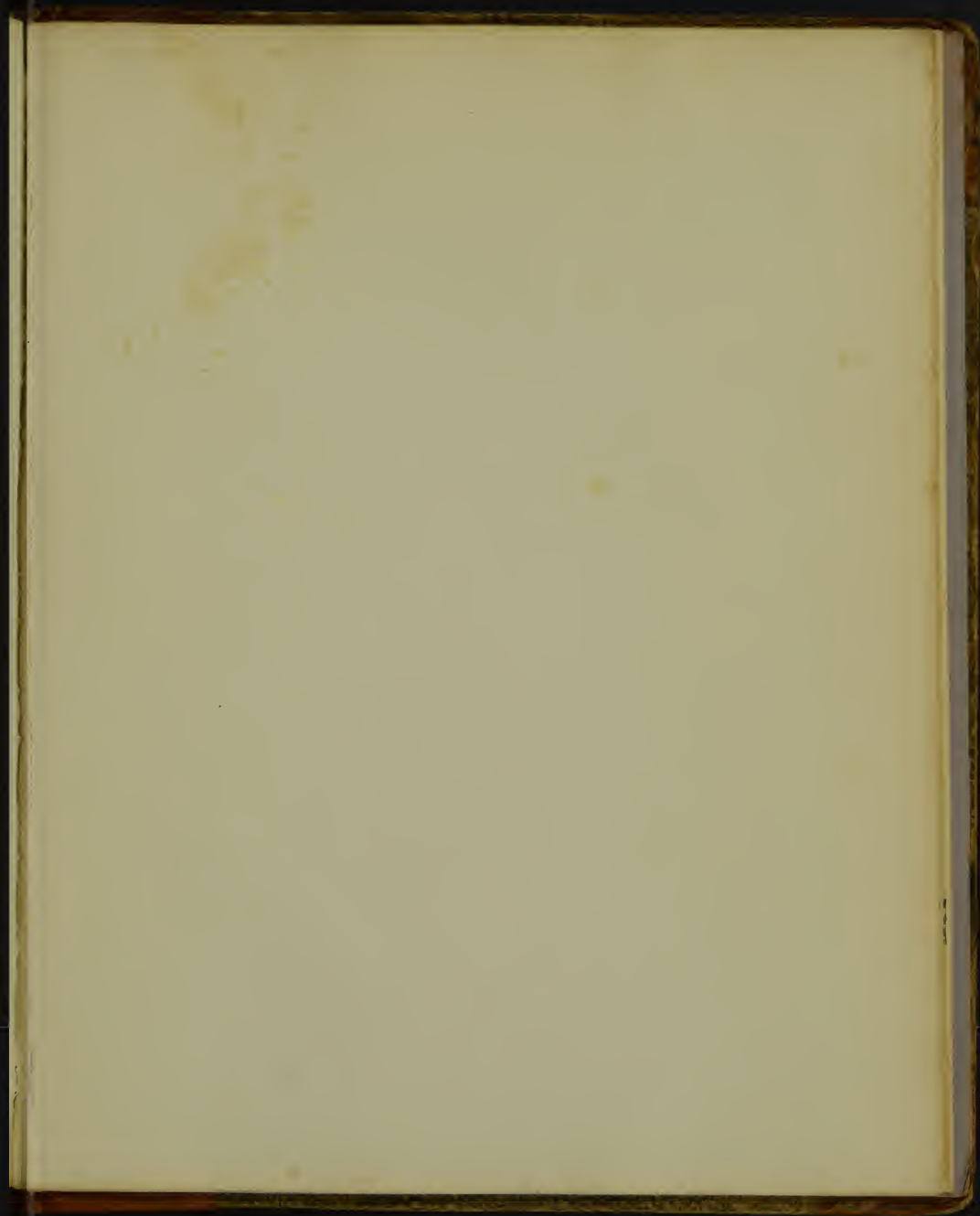




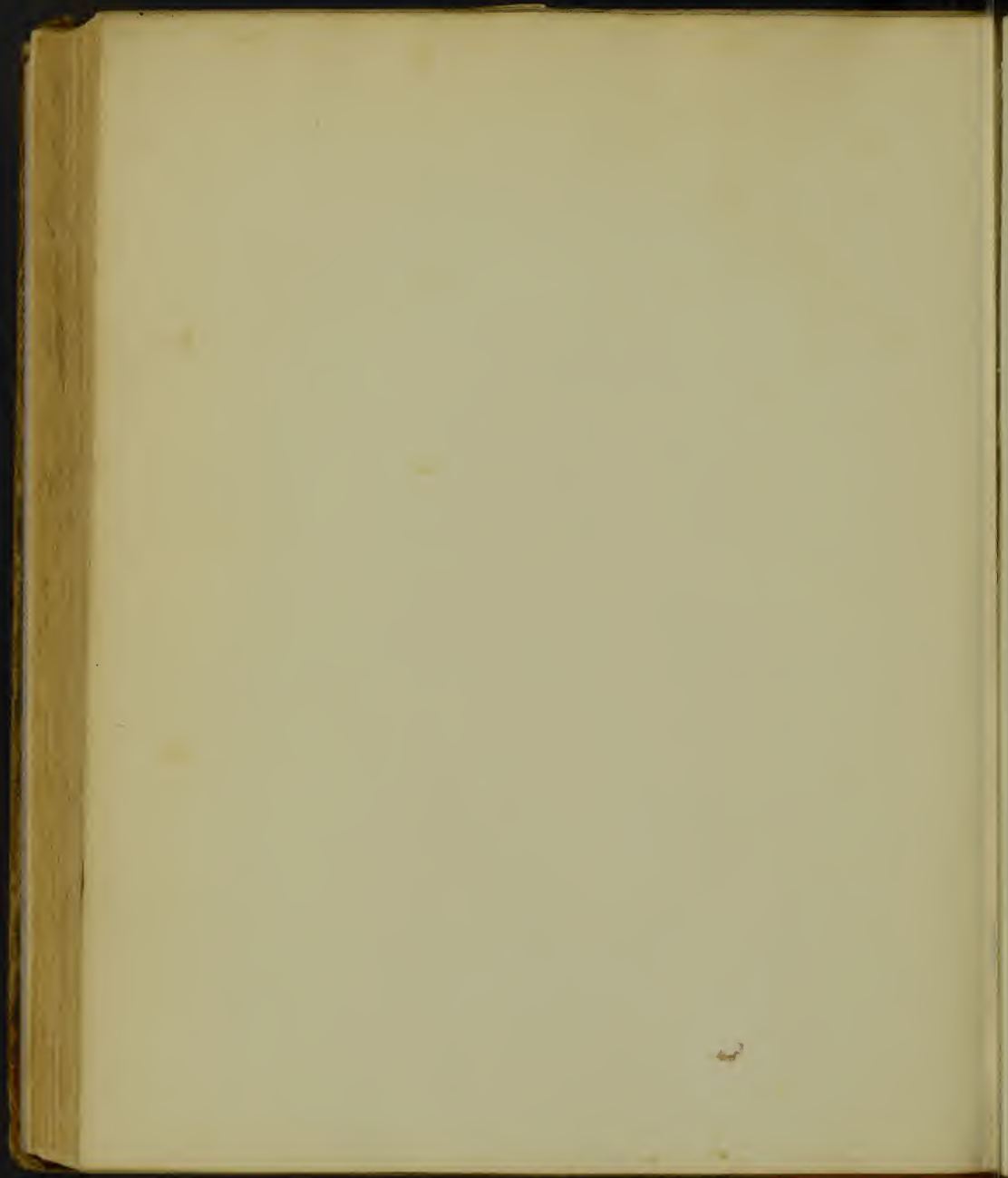


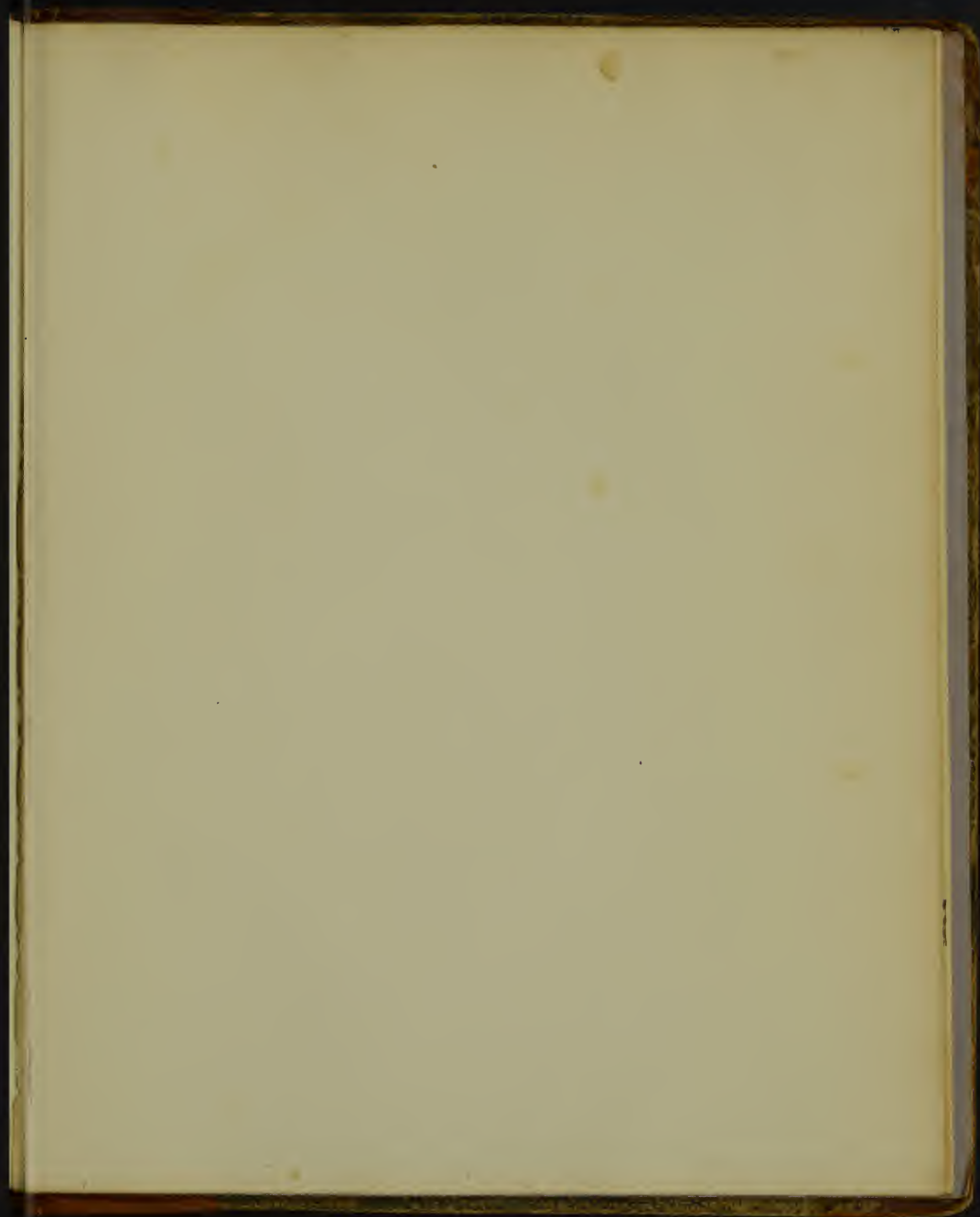


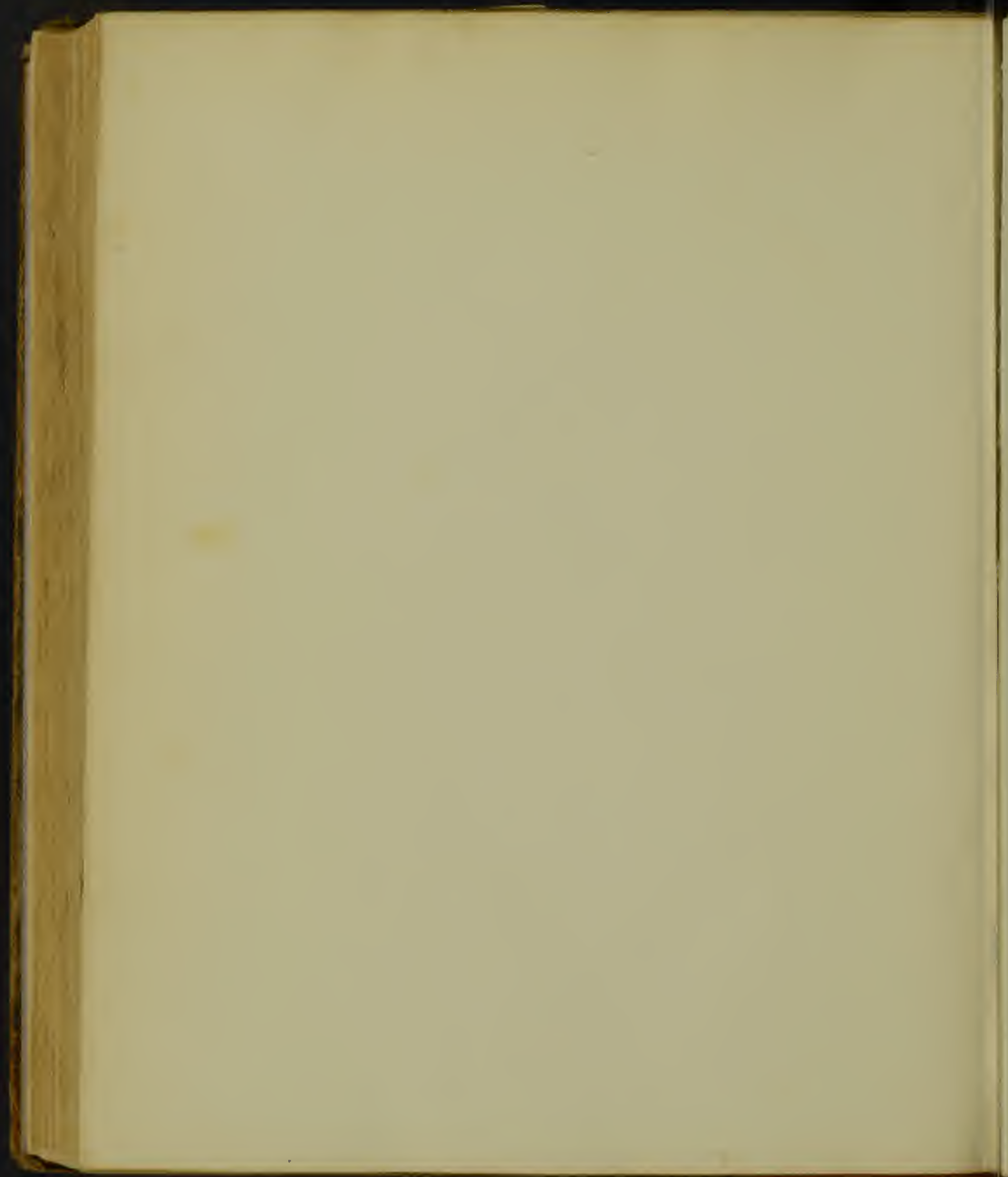


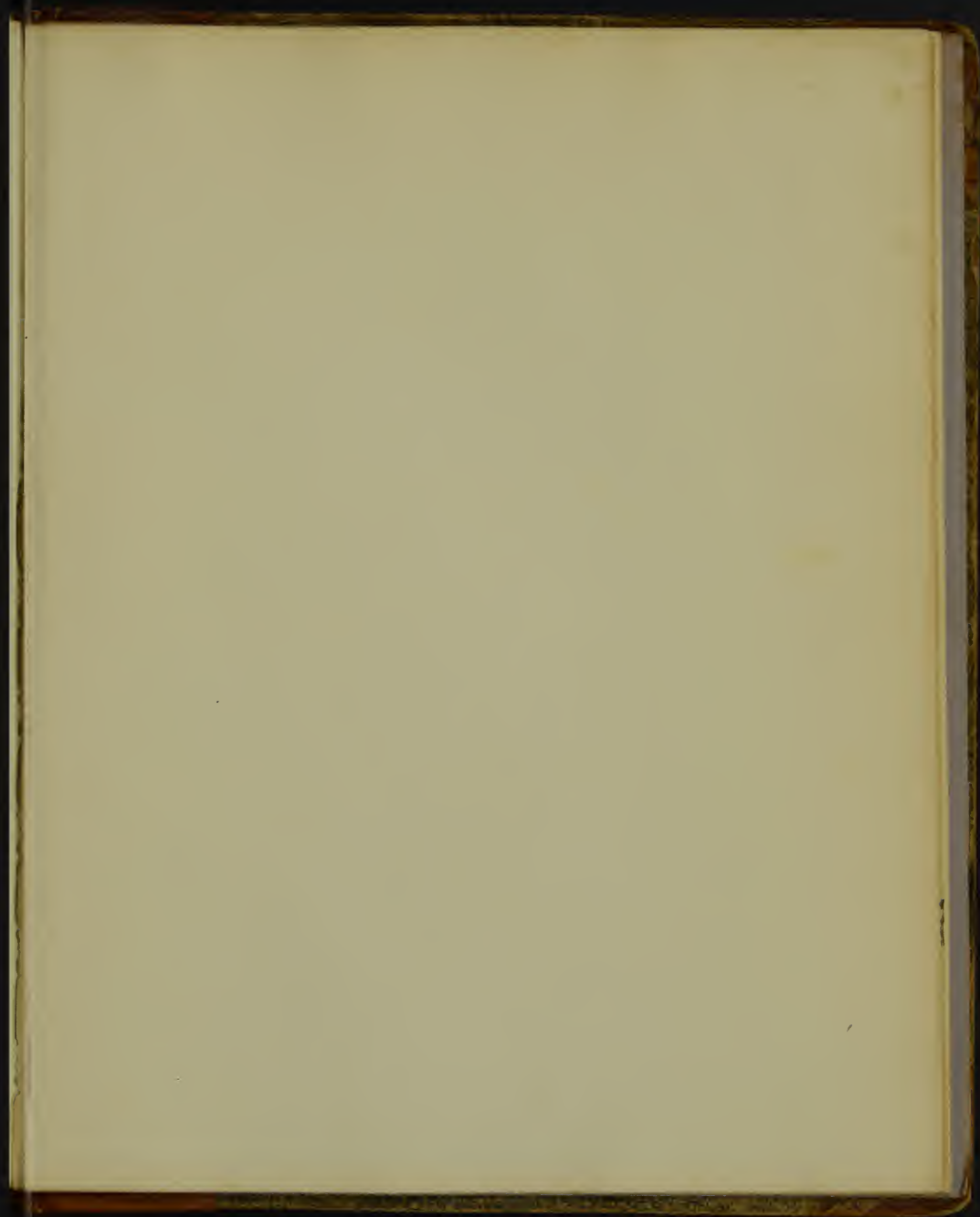




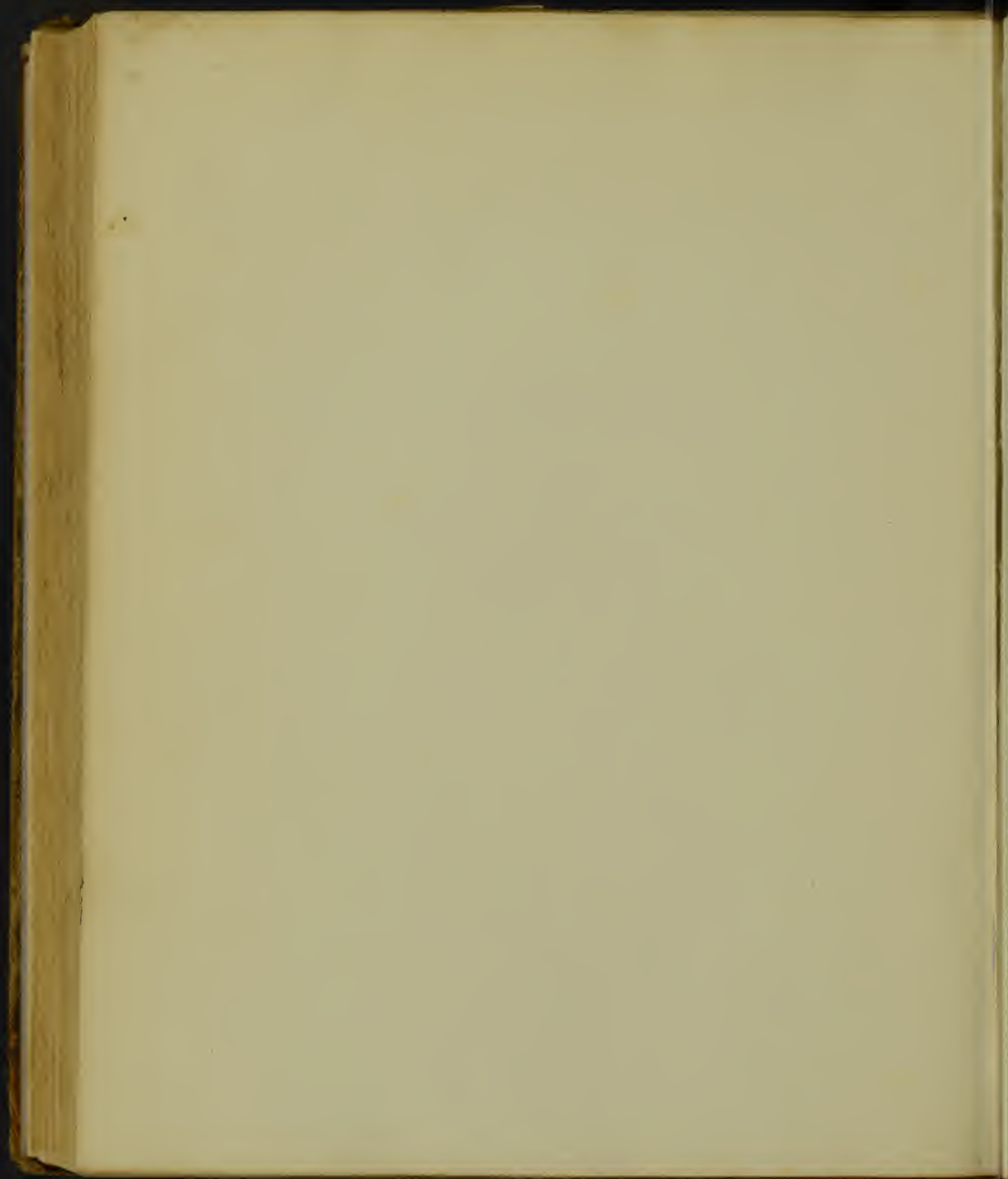


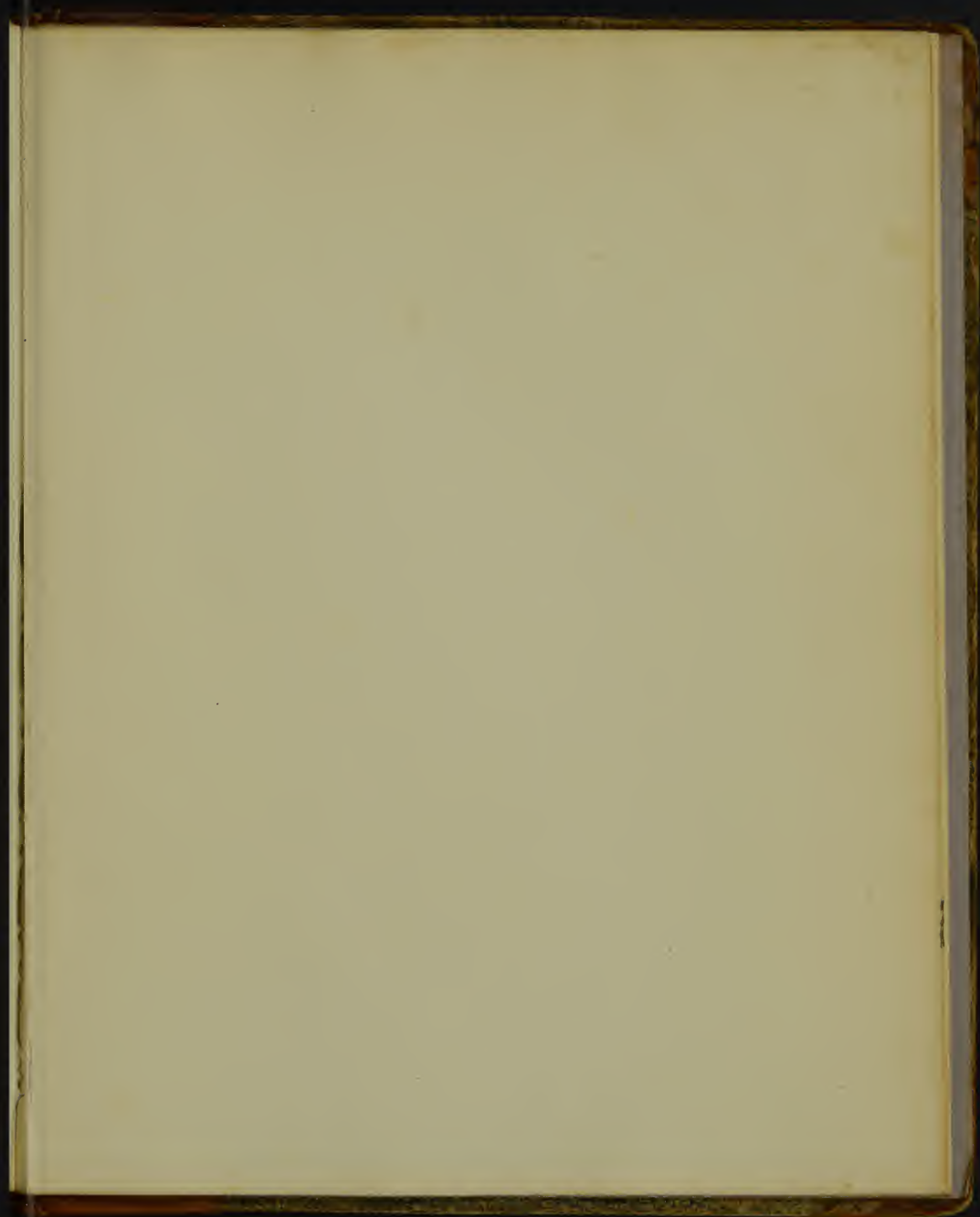


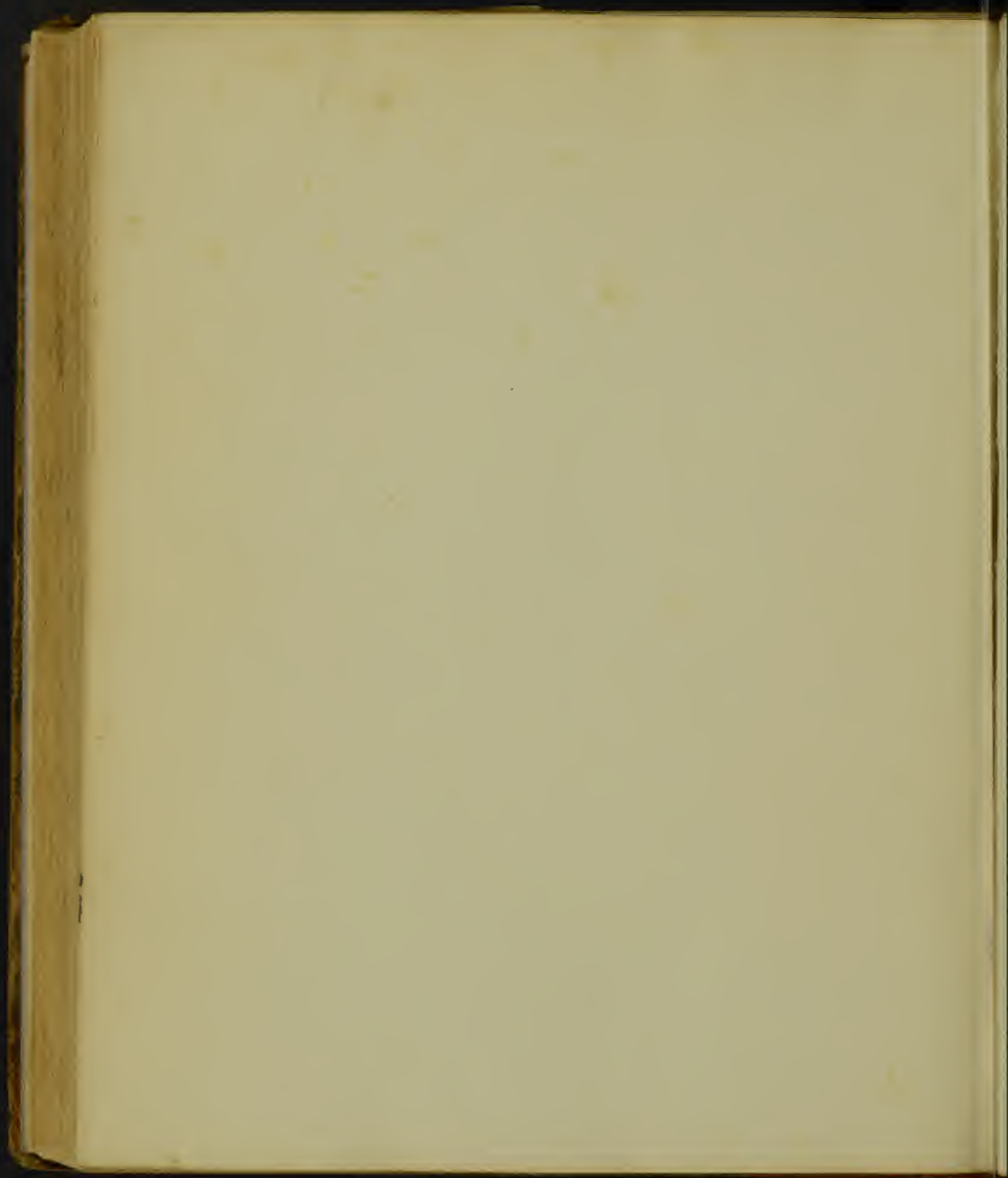


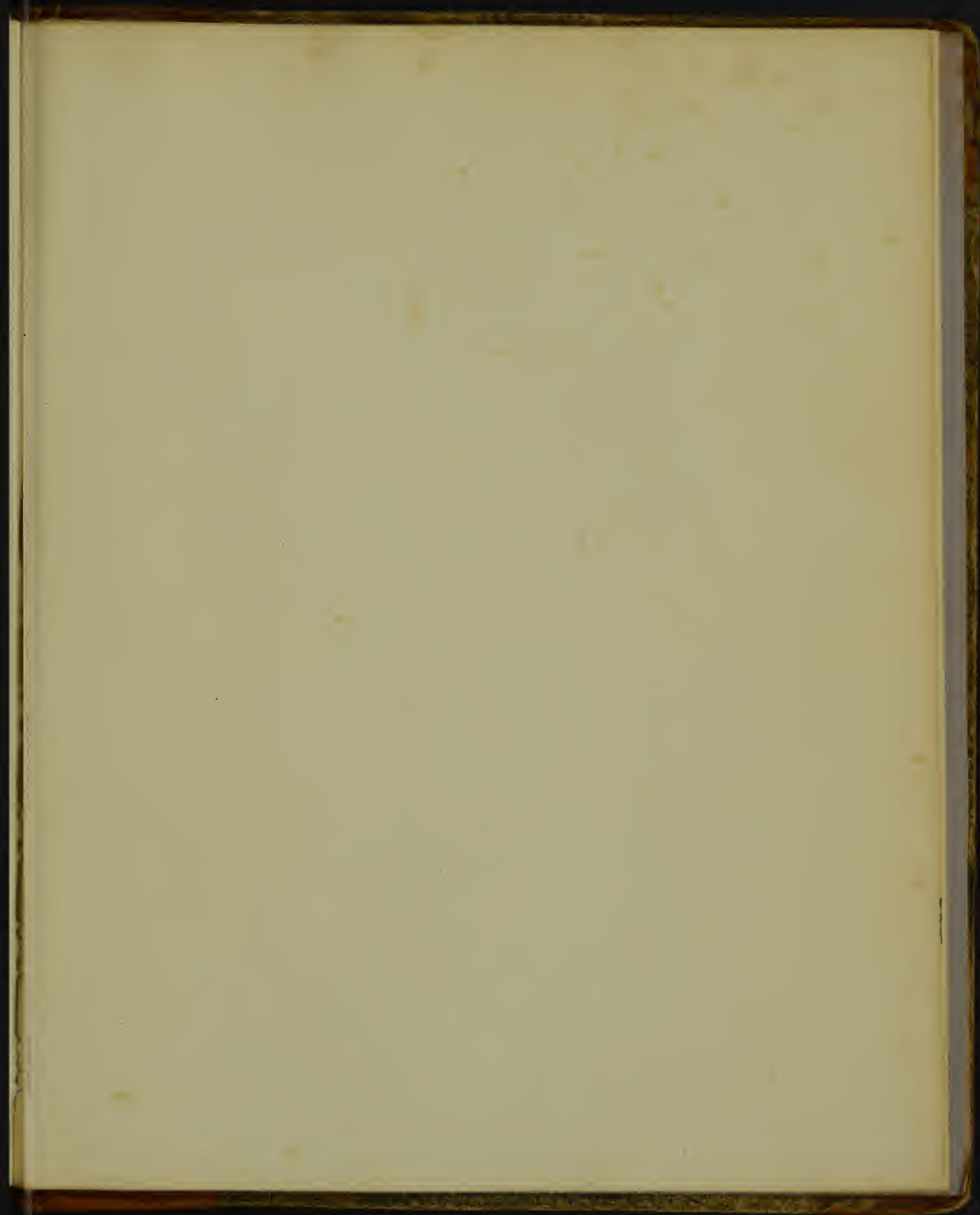




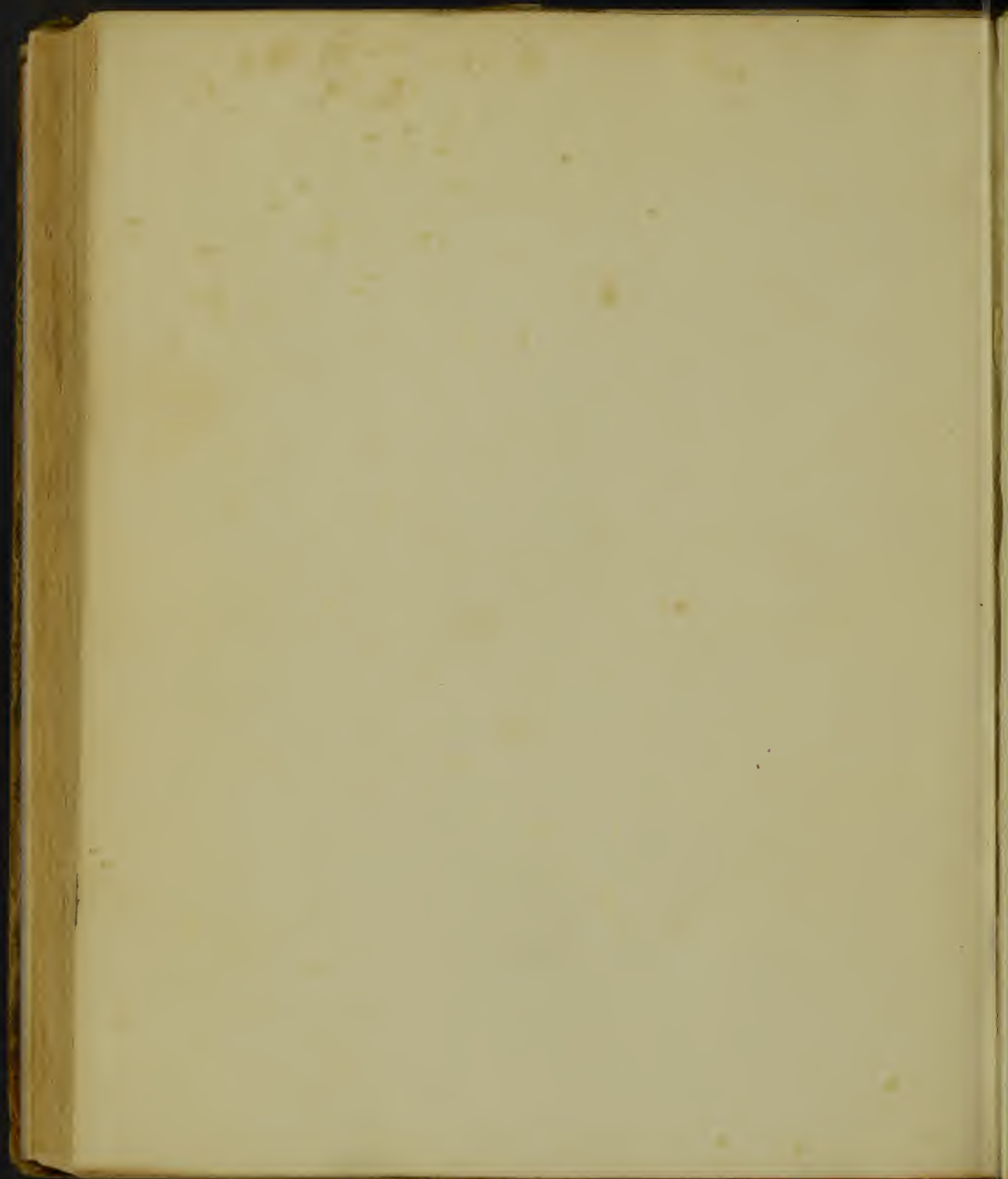


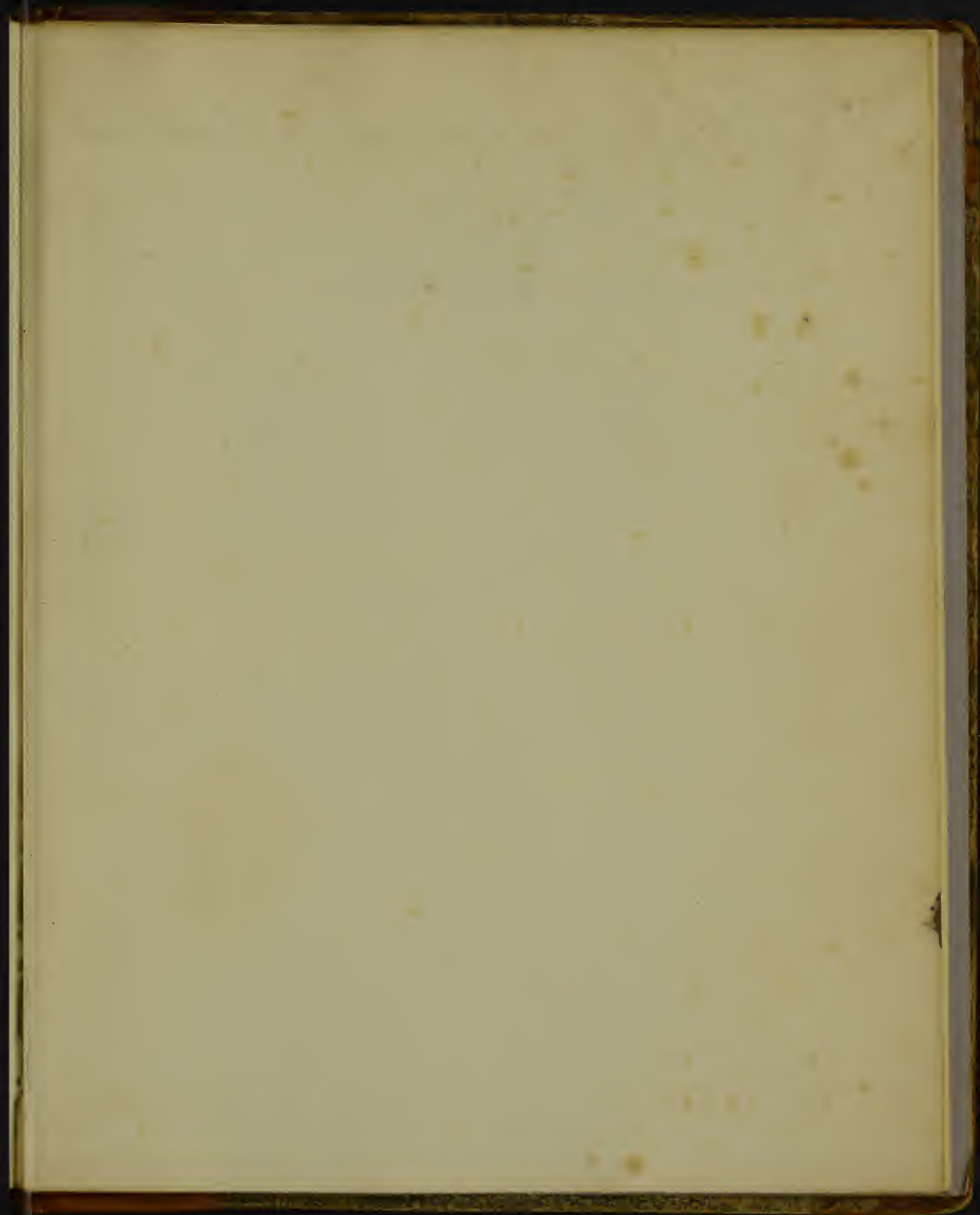






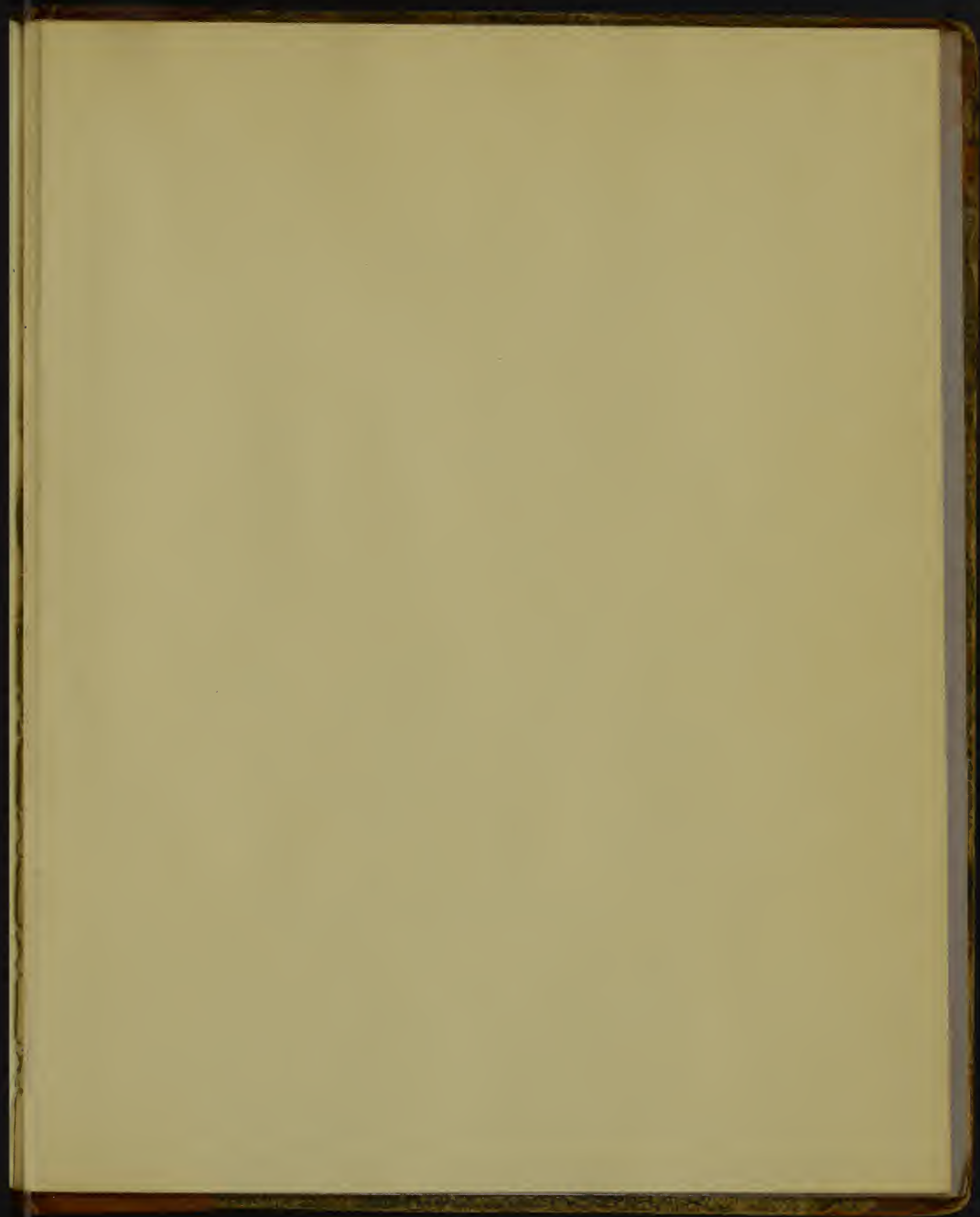




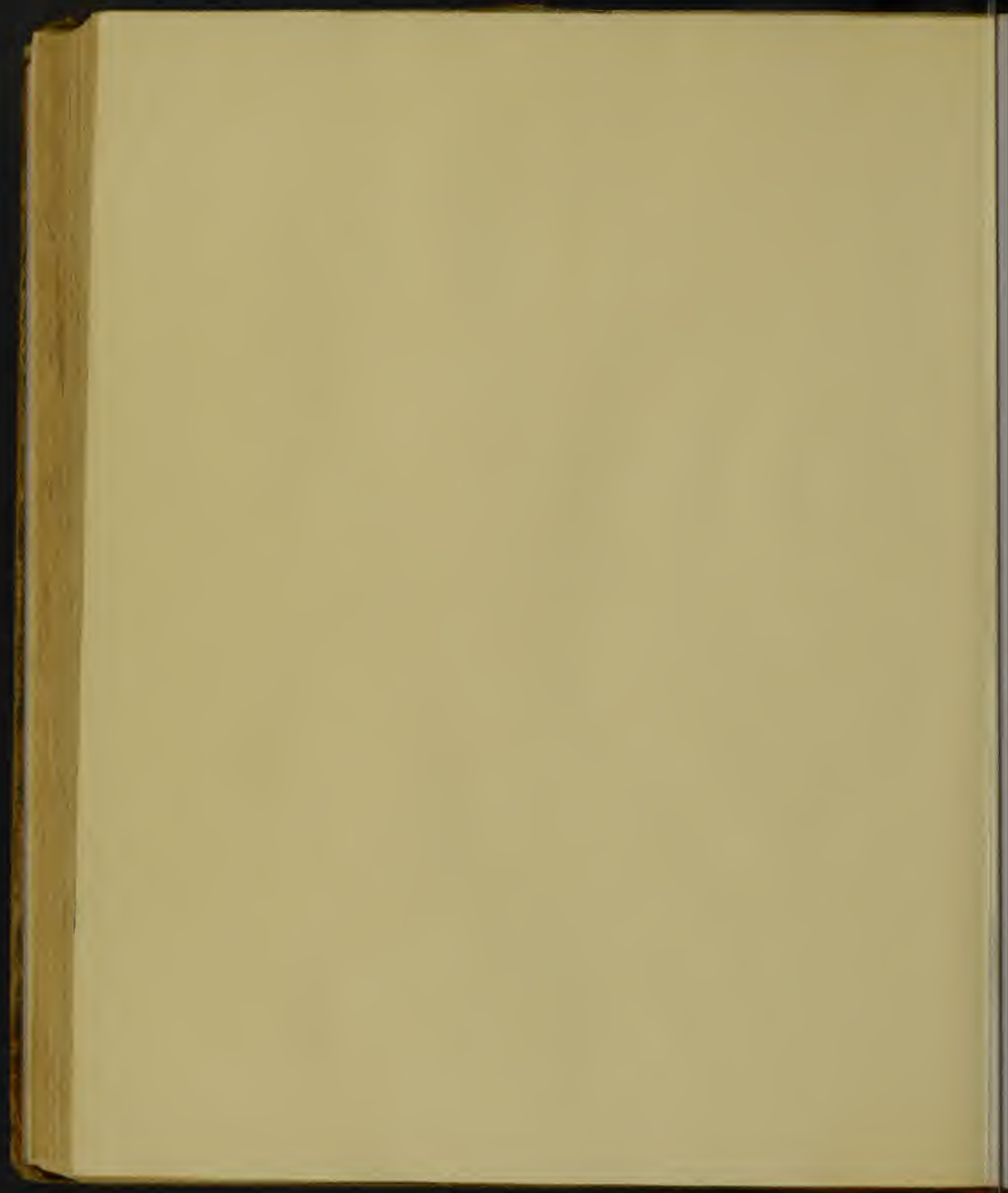


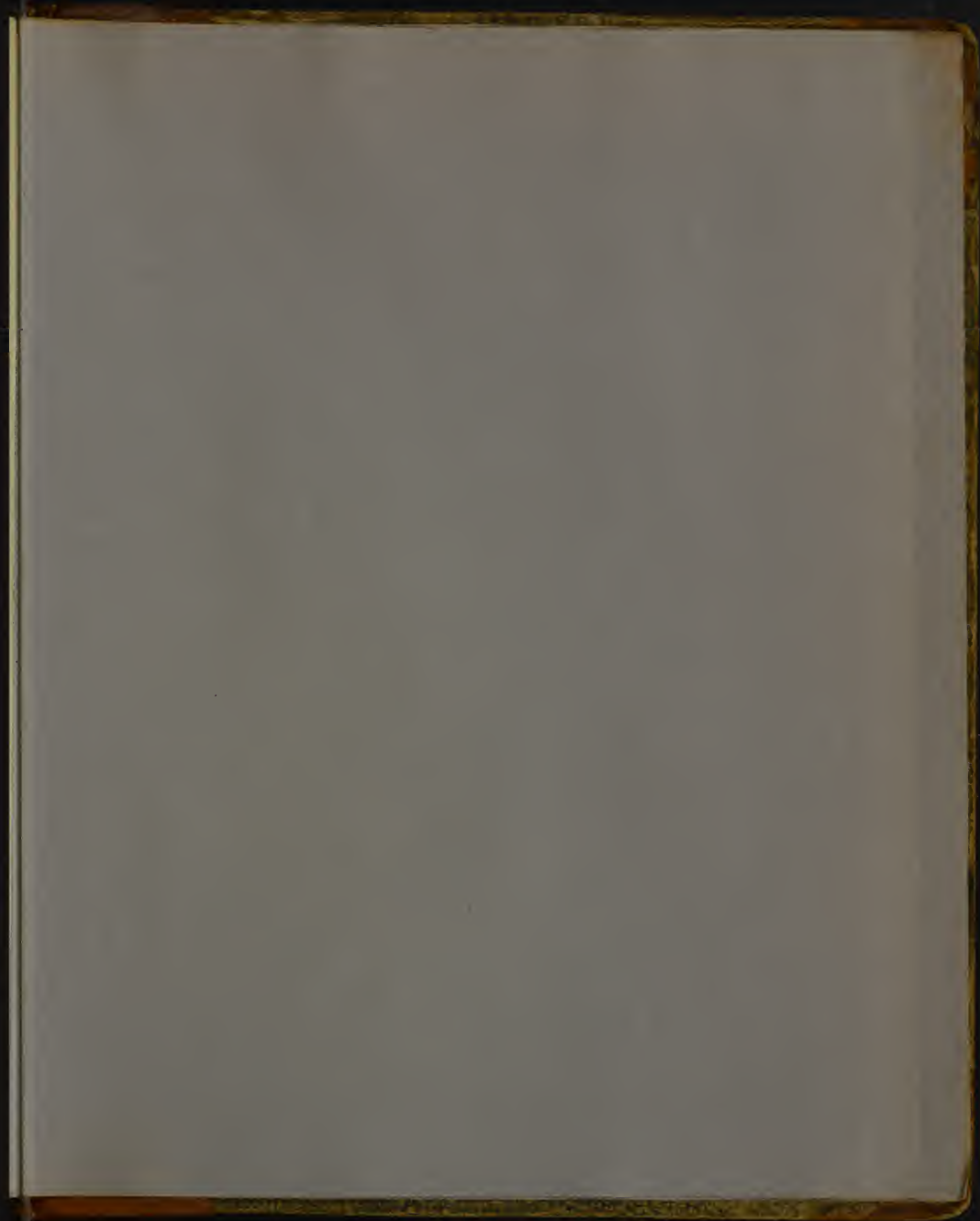
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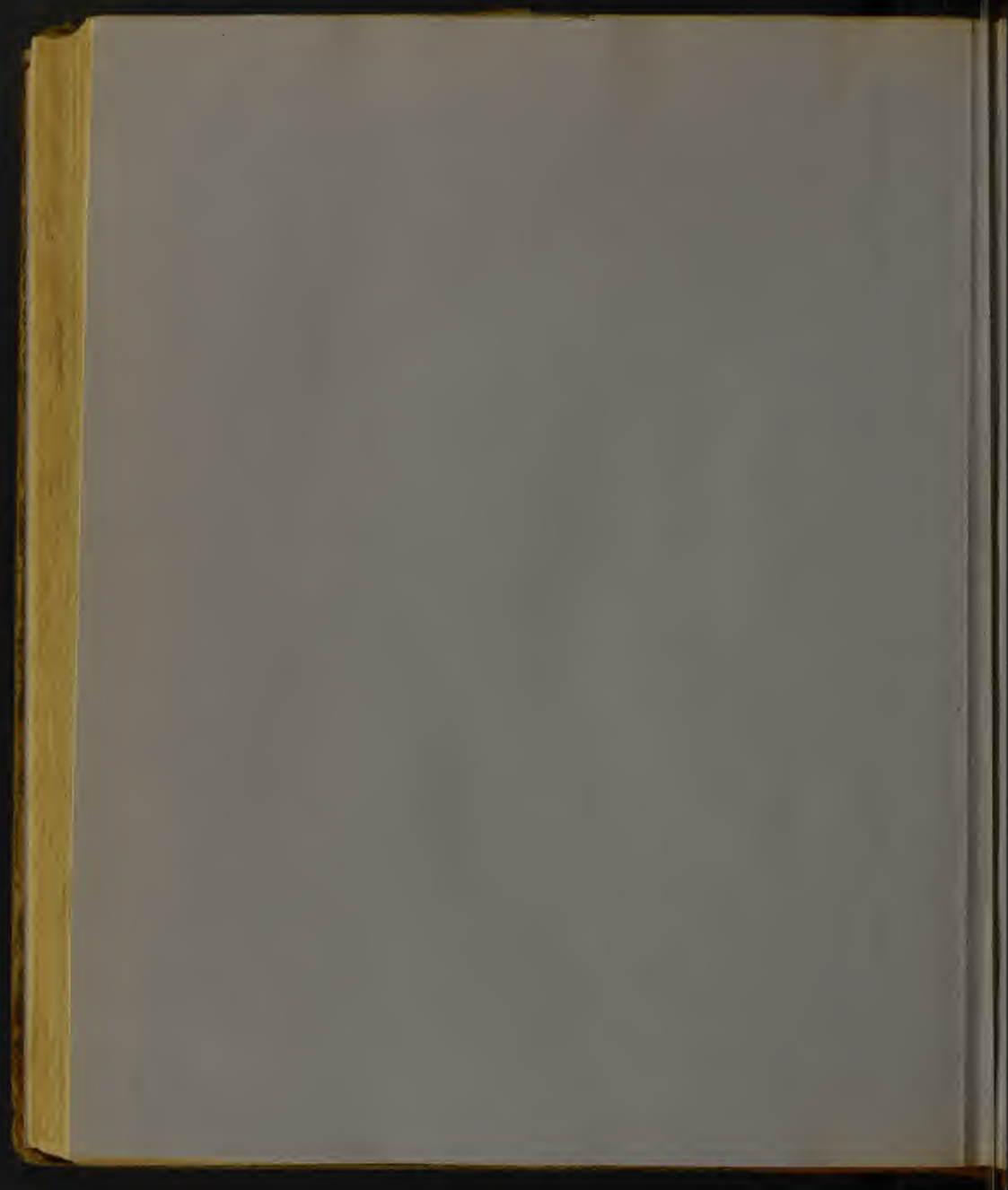
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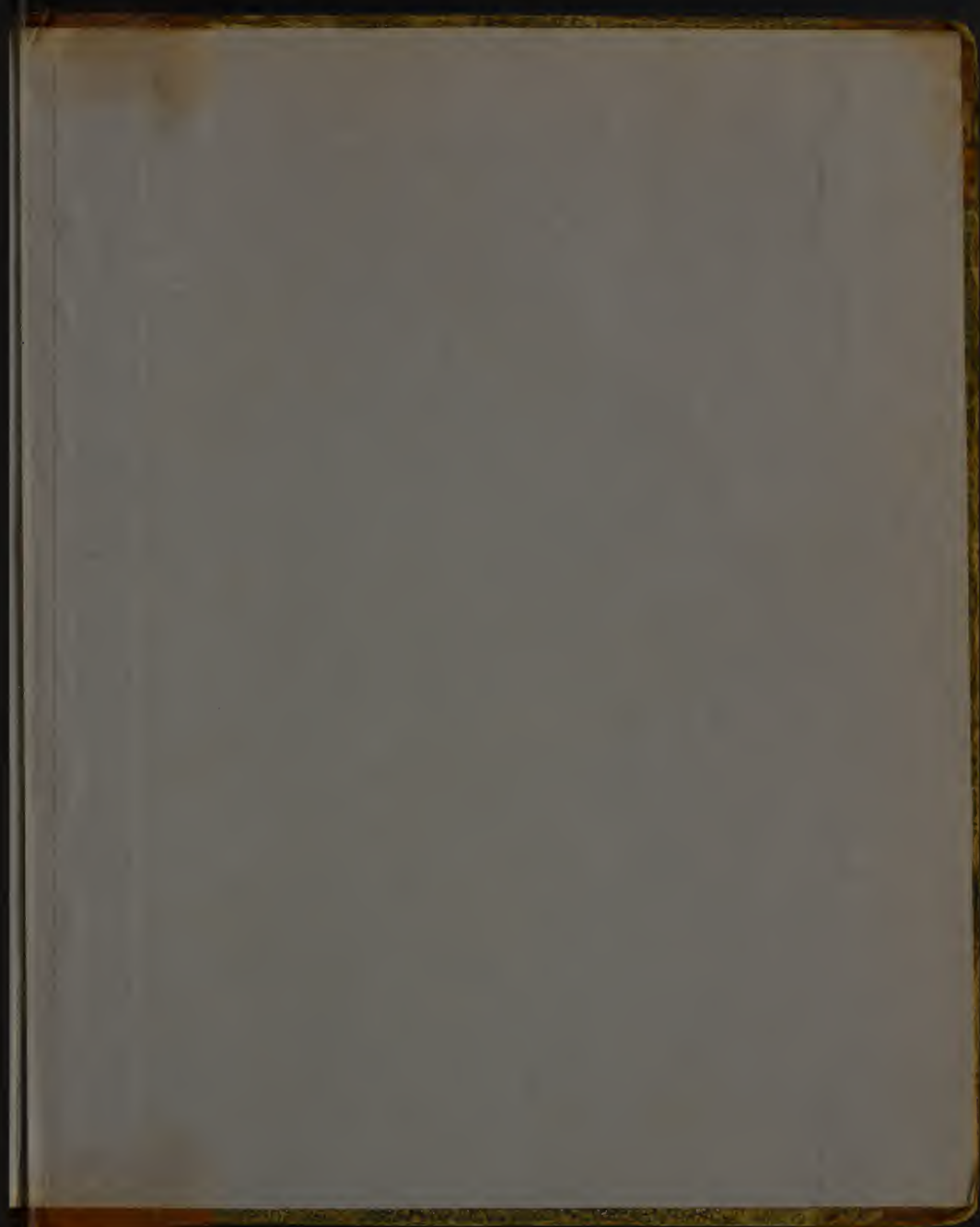
















REEVE &  
GOULD'S  
LECTURES

VOL. 3